

HOUSE JOURNAL

SEVENTY-FIFTH LEGISLATURE, REGULAR SESSION

PROCEEDINGS

FIFTY-NINTH DAY — FRIDAY, APRIL 25, 1997

The house met at 2:15 p.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 228).

Present — Mr. Speaker; Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Burnam; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Cuellar; Culberson; Danburg; Davila; Davis; Delisi; Denny; Driver; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hinojosa; Hirschi; Hochberg; Hodge; Holzheuser; Horn; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Jones, J.; Junell; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McClendon; McReynolds; Merritt; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Rhodes; Roman; Sadler; Seaman; Serna; Shields; Siebert; Smith; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williams; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Absent, Excused — Dukes.

(Speaker pro tempore in the chair)

LEAVES OF ABSENCE GRANTED

On motion of Representative Carter and by unanimous consent, all members who were granted leaves of absence on the previous legislative day were granted leaves for this legislative day.

RULES SUSPENDED

Representative Carter moved to suspend all necessary rules in order to take up and consider at this time, on third reading and final passage, the bills on the local, consent, and resolutions calendar which were considered on the previous legislative day.

The motion prevailed without objection.

MOTION FOR ONE RECORD VOTE

On motion of Representative Carter and by unanimous consent, the house agreed to use the first record vote taken for all those bills on the local, consent, and resolutions calendar that require a record vote on third reading and final passage, with the understanding that a member may record an individual vote on any bill with the journal clerk.

**LOCAL CALENDAR
CONSENT CALENDAR
THIRD READING**

The following bills which were considered on second reading on the previous legislative day on the local, consent, and resolutions calendar were laid before the house, read third time, and passed by a voice vote (members registering votes are shown following bill number):

HB 1891

HB 2734

HB 3548

HB 3557

HB 3558

HB 587 (Heflin - no)

HB 726

HB 814

HB 826

HB 907

HB 917

HB 1039

HB 1138 (Heflin - no)

HB 1291

HB 1294

HB 1324

HB 1407 (Finnell, Heflin, Horn, and Howard - no)

HB 1487 (Heflin - no)

HB 1614

HB 1632

HB 1706

HB 1773

HB 1805

HB 1823

HB 1933

HB 1960

HB 1974

HB 1989

HB 2003

HB 2005 (Finnell, Heflin, and Horn - no)

HB 2007

HB 2080

HB 2179

HB 2215

HB 2261

SB 730

HB 2445

HB 2510

HB 2512

HB 2519

HB 2522 (Heflin - no)

HB 2526

HB 2531

HB 2561

HB 2573

HB 2584

HB 2634

HB 2683

HB 2685

HB 2702

HB 2727

HB 2738

HB 2745

HB 2759

HB 2801

HB 2816

HB 2829

HB 2830

HB 2847

HB 2858

HB 2863

HB 2866

HB 2871

HB 2951

HB 3076

HB 3077

HB 3088

HB 3105

HB 3106

HB 3176

HB 3231

HB 3278

HB 3334

HB 3356

HB 3436

SB 1590

SB 120

SB 446

SB 460

SB 484

SB 492

SB 538

SB 634

SB 638

SB 800

SB 819

SB 997

SB 998

The following bills which were considered on second reading on the previous legislative day on the local, consent, and resolutions calendar were laid before the house, read third time, and passed by (Record 229): 145 Yeas, 0 Nays, 3 Present, not voting (members registering votes and the results of the vote are shown following bill number).

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Burnam; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Cuellar; Culberson; Danburg; Davila; Davis; Delisi; Denny; Driver; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Flores; Gallego; Galloway; Garcia; Giddings; Glaze;

Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hinojosa; Hirschi; Hochberg; Hodge; Holzheuser; Horn; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Jones, J.; Junell; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McClendon; McReynolds; Merritt; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Rhodes; Roman; Sadler; Seaman; Serna; Shields; Siebert; Smith; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Van de Putte; Walker; West; Williams; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker; Talton; Uher(C).

Absent, Excused — Dukes.

HB 3538 (145-0-3)

HB 3559 (145-0-3)

SB 400 (145-0-3)

HB 65 (Heflin - no) (144-1-3)

HB 1254 (145-0-3)

HB 1345 (145-0-3)

HB 1367 (145-0-3)

HB 1556 (145-0-3)

HB 2411 (Heflin - no) (144-1-3)

HB 2528 (145-0-3)

HB 2564 (145-0-3)

HB 2807 (145-0-3)

HB 2848 (145-0-3)

HB 2923 (Heflin - no) (144-1-3)

HB 2933 (Heflin - no) (144-1-3)

SB 1755 (145-0-3)

HB 3104 (145-0-3)

HB 3112 (145-0-3)

HB 3212 (145-0-3)

HB 3443 (145-0-3)

HB 3550 (145-0-3)

SB 161 (145-0-3)

SB 590 (145-0-3)

(Speaker in the chair)

CSHB 4 - (unfinished business)

Amendment No. 51 - Vote Reconsidered

Representative S. Turner moved to reconsider the vote by which Amendment No. 51 was adopted Thursday, April 24.

The motion to reconsider prevailed.

Amendment No. 63

Representative Brimer offered the following amendment to Amendment No. 51:

Amend the Turner Amendment **CSHB 4** (page 139 of the amendment book) by striking page 2, line 6, through page 3, line 5, which adds Section 3.2115, Public Utility Regulatory Act of 1995 (Article 1446c-0, Vernon's Texas Civil Statutes).

Amendment No. 63 was adopted without objection. (Hochberg recorded voting no)

Amendment No. 64

Representative Chisum offered the following amendment to Amendment No. 51:

Amend the Turner amendment to **CSHB 4** as follows:

(1) On page 1, strike lines 7-11 and substitute:

Sec. 2.2125. ADJUSTMENT FOR CHANGES IN STATE AND LOCAL TAX LIABILITY. (a) The Commission, on its own motion or on the petition of an electric utility, including an electric cooperative corporation, shall provide for the adjustment of the utility's billing to reflect a net increase or decrease in the utility's state and local tax liability, including reductions to ad valorem taxes if the increase or decrease:

(2) On page 1, line 25, between "utility's" and "decrease", insert "increase or".

(3) On page 2, line 3, between "additional" and "decrease", insert "increase or".

A record vote was requested.

Amendment No. 64 was adopted by (Record 230): 83 Yeas, 64 Nays, 1 Present, not voting.

Yeas — Allen; Averitt; Bonnen; Bosse; Brimer; Carter; Chisum; Christian; Clark; Cook; Corte; Counts; Crabb; Craddick; Culberson; Delisi; Denny; Driver; Dunnam; Elkins; Finnell; Galloway; Goodman; Goolsby; Grusendorf; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hilbert; Hilderbran; Hill; Holzheuser; Horn; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Madden; Marchant; McCall; Merritt; Moffat; Mowery; Nixon; Palmer; Patterson; Pitts; Place; Rabuck; Ramsay; Raymond; Reyna, E.; Rhodes; Roman; Sadler; Seaman; Shields; Siebert; Smith; Solomons; Staples; Swinford; Talton; Turner, B.; Uher; Walker; West; Williams; Williamson; Wohlgemuth; Woolley.

Nays — Alexander; Alvarado; Bailey; Berlanga; Burnam; Chavez; Coleman; Cuellar; Danburg; Davila; Davis; Dutton; Edwards; Ehrhardt; Eiland; Farrar; Flores; Gallego; Garcia; Giddings; Glaze; Gray; Greenberg; Gutierrez; Hernandez; Hightower; Hinojosa; Hirschi; Hochberg; Hodge; Jones, J.; Junell; Lewis, G.; Lewis, R.; Longoria; Luna; Maxey; McClendon; McReynolds; Moreno; Naishtat; Oakley; Oliveira; Olivo; Pickett; Price; Puente; Rangel; Reyna, A.; Serna; Smithee; Solis; Stiles; Telford; Thompson; Tillery; Torres; Turner, S.; Van de Putte; Wilson; Wise; Wolens; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Dukes.

Amendment No. 65

Representatives Pickett and Haggerty offered the following amendment to Amendment No. 51:

Amend the Turner Amendment to **CSHB 4** by adding at the end of item (1) the following appropriately numbered Subsection to added Section 2.2125, Public Utility Regulatory Act of 1995 (Article 1446c-0, Vernon's Texas Civil Statutes):

() This section does not require an electric utility that is under an order issued by a federal bankruptcy court to adjust its billings to reflect a decrease in its tax liability. The utility shall apply the decrease to the pay-down of the utility's debt.

Amendment No. 65 was adopted without objection.

Amendment No. 51, as amended, was adopted without objection.

Amendment No. 53 - Vote Reconsidered

Representative Williamson moved to reconsider the vote by which Amendment No. 53 was adopted Thursday, April 24.

The motion to reconsider prevailed.

Amendment No. 66

Representative Williamson offered the following amendment to Amendment No. 53:

Amend Floor Amendment No. 53, by Williamson, to read as follows:

Amend **CSHB 4** as follows:

(1) Add the following appropriately numbered article and renumber subsequent articles accordingly:

ARTICLE ____ . ALTERNATIVE TAXATION OF OIL OR
GAS PROPERTY INTERESTS

SECTION ____ . Subtitle I, Title 2, Tax Code, is amended by adding Chapter 205 to read as follows:

CHAPTER 205. ALTERNATIVE TAXATION OF OIL OR
GAS PROPERTY INTEREST

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 205.001. CHAPTERS 201 AND 202 APPLICABLE. Except to the extent that a provision of this chapter applies, Chapters 201 and 202 apply to the taxes imposed by this chapter in the same manner as those chapters apply to the taxes imposed by those chapters.

Sec. 205.002. APPLICATION OF CHAPTER. This chapter applies to oil and gas produced from property for which the owner of the oil or gas interest has elected under Section 1.16 to pay the tax imposed by this chapter on the oil and gas produced in lieu of ad valorem taxes imposed on the oil or gas interest under Title 1.

[Sections 205.003-205.020 reserved for expansion]

SUBCHAPTER B. IMPOSITION AND COLLECTION OF TAXES

Sec. 205.021. GAS TAX IMPOSED. (a) There is imposed a tax on each producer of gas, including condensate and liquid hydrocarbons, subject to this chapter.

(b) The rate of the tax imposed by this section is 2.5 percent of the market value of:

(1) gas produced and saved in this state by the producer; or

(2) liquid hydrocarbons, other than condensate, recovered from gas produced in this state by the producer.

(c) The tax on condensate is imposed at the same rate as the rate of the tax imposed on oil by Section 205.022.

(d) Section 201.053 applies to the tax imposed by this section.

Sec. 205.022. OIL TAX IMPOSED. (a) There is imposed a tax on the production of oil subject to this chapter.

(b) The rate of the tax imposed by this section is 2.4 percent of the gross wellhead receipts derived from oil produced in this state.

Sec. 205.023. TAX IN ADDITION TO OTHER TAX. (a) The taxes imposed by this chapter are in addition to any applicable tax imposed by Chapter 201 or 202.

(b) Except as provided by Section 205.021, an exemption or rate reduction provided by Chapter 201, 202, or 204 or other law does not apply to the taxes imposed by this chapter.

Sec. 205.024. REPORTS. In addition to the applicable records and reports required by Chapters 201 and 202, the comptroller may require a person subject to a tax imposed by this chapter to keep a record of and report any additional information necessary to administer this chapter.

[Sections 205.025-205.050 reserved for expansion]

SUBCHAPTER C. ALLOCATION AND USE OF TAX

Sec. 205.051. DEPOSIT AND ALLOCATION. (a) The comptroller shall apportion among the state and each taxing unit in which the oil or gas is produced an amount of the revenue collected under this chapter in proportion to the ad valorem tax rates of the state and the taxing unit.

(b) The collector for a taxing unit or the comptroller shall deposit and allocate all revenue from the taxes imposed by this chapter in the same manner the collector or the comptroller deposits and allocates revenue from ad valorem taxes imposed by the taxing unit or the state.

(2) In Article 2 of the proposed substitute, insert a new section, appropriately numbered, to read as follows, and renumber subsequent sections appropriately:

SECTION 2.____. Chapter 1, Tax Code, is amended by adding Section 1.16 to read as follows:

Sec. 1.16. ALTERNATIVE TAX. (a) The owner of an interest in property

consisting of a separate interest in oil or gas and from which oil or gas is produced may elect to pay the gross receipts tax imposed under Chapter 205 in lieu of ad valorem taxes imposed by the state or a taxing unit on that oil or gas interest. If the oil or gas interest is owned by more than one owner, all of the owners must elect to pay the gross receipts tax.

(b) The operator of the oil or gas interest designated with the Railroad Commission of Texas shall notify the comptroller of election to pay the gross receipts tax. A notice of election must be filed with the comptroller before December 1 of the year in which the election is made. The notice must be in the form and manner specified by the comptroller. The election takes effect January 1 of the year following the year in which the notice is filed.

(c) The election remains in effect until the operator notifies the comptroller that the election has been rescinded by the owner or all owners of the oil or gas interest. A notice of rescision must be filed with the comptroller before December 1 of the year in which the election is rescinded. The notice must be in the form and manner specified by the comptroller. The rescision takes effect January 1 of the year following the year in which the notice is filed.

(d) The comptroller shall send a copy of each notice of election or rescision to the chief appraiser of the appraisal district established for the county in which the subject property is located and to each taxing unit in that county.

(e) The comptroller shall adopt forms and rules to administer this section.

(f) In the absence of an election for a tax year under this section, including an attempted election, that does not conform to the requirements of this section or the rules of the comptroller, the ad valorem taxes imposed by the state and taxing units of this state apply.

(3) In Article 2 of the bill, add a new section, appropriately numbered, to read as follows, and renumber subsequent sections of the bill appropriately:

SECTION 2.____. Subchapter B, Chapter 23, Tax Code, is amended by adding Section 23.176 to read as follows:

Sec. 23.176. APPRAISAL METHOD USED TO CALCULATE VALUE OF OIL OR GAS PRODUCING PROPERTY. (a) This section applies only to property consisting of a separate interest in oil or gas and from which oil or gas is produced.

(b) Each year, the owner of property who renders the property under Section 22.01 may request the chief appraiser to calculate the market value of the property using:

- (1) a discounted cash-flow analysis;
- (2) a gross-income multiplier;
- (3) another generally recognized appraisal method; or
- (4) any combination of Subdivisions (1)-(3).

(c) The owner shall include the owner's proposed appraisal method or combination of methods on the rendition statement or property report filed with the chief appraiser. If the property is owned by more than one person, all of the owners must join in the request.

(d) If the chief appraiser determines that use of the appraisal method or combination of methods requested by the owner of the property will result in an accurate calculation of the market value of the property, the chief appraiser shall calculate the market value of the property using that method or combination.

(e) If the chief appraiser determines that use of the appraisal method or combination of methods requested by the owner of the property will not result in an accurate calculation of the market value of the property, the chief appraiser shall:

(1) notify the owner that the chief appraiser will not calculate the market value of the property using that method or combination; and

(2) inform the owner of the alternative appraisal method or combination of methods that the chief appraiser intends to use to calculate the market value of the property.

(f) Notice to the owner must:

(1) be in writing and delivered before the 15th day after the date the rendition statement or property report is filed; and

(2) inform the owner that the owner is entitled to appeal the chief appraiser's determination to the appraisal review board of the appraisal district by filing a notice of appeal with the board before the 15th day after the date the notice is delivered to the owner.

(g) If an appeal is timely filed with the appraisal review board, the board shall hold a hearing on the appeal. The board shall hold the hearing no later than the 15th day after the date that the notice of appeal is filed. The hearing shall be conducted in the manner provided by Subchapter C, Chapter 41.

(h) The board shall determine whether the taxable value of the property shall be calculated by use of:

(1) the appraisal method or combination of methods requested by the owner;

(2) the appraisal method or combination of methods proposed by the chief appraiser; or

(3) if the board determines that neither of those methods will result in an accurate calculation of the market value of the property, another method determined by the chief appraiser and approved by the board at the hearing.

(i) The determination of the appraisal review board on the appeal is final and may not be appealed by the property owner or the chief appraiser.

(j) The comptroller shall adopt rules and forms to implement this section and provide sufficient copies to each appraisal office in this state. The rules must include a definition of each appraisal method listed in Subsections (b)(1) and (2). An appraisal office shall provide, without charge, a copy of the definitions adopted by the comptroller under this section to a person requesting the definitions.

Amendment No. 66 was adopted without objection.

Amendment No. 53, as amended, was adopted without objection.

Amendment No. 61 - Vote Reconsidered

Representative Garcia moved to reconsider the vote by which Amendment No. 61 was adopted Thursday, April 24.

Representative Stiles moved to table the motion to reconsider.

A record vote was requested.

The motion to table prevailed by (Record 231): 86 Yeas, 59 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bonnen; Brimer; Carter; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Cuellar; Culberson; Delisi; Denny; Elkins; Finnell; Galloway; Goodman; Goolsby; Gray; Grusendorf; Hamric; Hartnett; Hawley; Heflin; Hightower; Hilbert; Hilderbran; Hill; Hinojosa; Holzheuser; Horn; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Kamel; Keel; Keffer; Krusee; Kubiak; Kuempel; Lewis, R.; Madden; Marchant; McCall; McReynolds; Merritt; Moffat; Mowery; Nixon; Oakley; Palmer; Patterson; Pitts; Price; Rabuck; Reyna, E.; Roman; Seaman; Serna; Shields; Siebert; Smith; Smithee; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Uher; Walker; West; Williams; Wohlgemuth; Woolley.

Nays — Alvarado; Bailey; Berlanga; Bosse; Burnam; Chavez; Danburg; Davila; Davis; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Farrar; Flores; Gallego; Garcia; Glaze; Greenberg; Gutierrez; Haggerty; Hernandez; Hirschi; Hochberg; Hodge; Jones, J.; Junell; King; Lewis, G.; Longoria; Luna; Maxey; McClendon; Moreno; Naishtat; Oliveira; Olivo; Pickett; Place; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Rhodes; Sadler; Solis; Tillery; Torres; Turner, B.; Turner, S.; Van de Putte; Williamson; Wilson; Wise; Wolens; Yarbrough; Zbraneck.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Dukes.

Absent — Driver; Giddings.

Amendment No. 67

Representative Isett offered the following amendment to **CSHB 4**:

Floor Packet Page No. 219

Amend **CSHB 4** by striking Article 21 of the bill and renumbering subsequent articles of the bill appropriately.

Representative Sadler moved to table Amendment No. 67.

The motion to table prevailed.

Amendment No. 68

Representatives S. Turner, Elkins, and Isett offered the following amendment to **CSHB 4**:

Floor Packet Page No. 221

Amend **CSHB 4** as follows:

(1) On page 150, line 1, add a new (12), renumbering present (12) and all succeeding subsections accordingly, as follows:

(12) "Partnership" means any taxable entity taxed as a partnership for United States federal income tax purposes.

(2) On page 173, line 19, at the beginning of new subsection (E), before "adding", insert "for a taxable entity with more than 35 owners, directly or indirectly."

(3) On page 173, line 23, after ":", insert "and".

(4) On page 173, line 24, through page 174, line 7, strike "and", strike the added contents of subsection (iii), and strike subsection (F), in full.

(5) On page 175, line 20, between "owners" and "for", insert "(other than amounts eligible to be treated as net earnings from self-employment as defined in Section 1402(a) of the Internal Revenue Code)".

(6) On page 176, line 27, between "partnership" and "that", insert "or S corporation (as defined in Section 1361 of the Internal Revenue Code)".

(7) On page 177, lines 6-8, strike subsection (C) in full and substitute:

(C) subtracting 100 percent of the amount of the income of the partnership reportable to the Internal Revenue Service as eligible to be treated as taxable to the partners as compensation, other than any partner who is an officer or director of a partnership that has more than 35 partners;

(8) On page 177, lines 22-23, between "has" and "partners", strike "35 or fewer" and substitute "more than 35".

(9) On page 177, line 25, between "income" and "reportable", insert "of the partnership".

(10) On page 177, lines 26-27, between "payments" and ".", strike ". if taxed as a partnership for federal income tax purposes".

(11) On page 178, line 1, insert a new subsection (d), relettering present subsection (d) as subsection (e) as follows:

(d) In this section, "compensation" means income reportable by the partnership to the Internal Revenue Service as income of the partners that is eligible to be treated as net earnings from self-employment as defined in Section 1402(a) of the Internal Revenue Code. "Compensation" does not include an amount precluded from state taxation by federal law.

Amendment No. 69

Representative S. Turner offered the following amendment to Amendment No. 68:

Please amend Amendment No. 68 by S. Turner to **CSHB 4** as follows,
Replace (1), as follows:

(1) On page 150, line 1, add a new (12), renumbering present (12) and all succeeding subsections accordingly, as follows:

(12) "Partnership" means any taxable entity that is a partnership under state law and is treated as a partnership for United States federal income tax purposes.

Delete amendment (9).

On No. (11) delete "eligible to be treated as".

(Janek in the chair)

Amendment No. 69 was withdrawn.

Amendment No. 70

Representatives S. Turner and Oliveira offered the following amendment to Amendment No. 68:

Please amend the Turner Amendment No. 68 as follows:

Delete amendment (1)

Delete amendment (9)

On No. (11) delete "eligible to be treated as" and "as defined in Section 1402(a) of the Internal Revenue Code".

Amendment No. 70 was adopted without objection.

(Speaker in the chair)

Representative Sadler moved to table Amendment No. 68.

A record vote was requested.

The vote of the house was taken on the motion to table Amendment No. 68 and the vote was announced yeas 73, nays 68.

A verification of the vote was requested and was granted.

The roll of those voting yea and nay was again called and the verified vote resulted, as follows (Record 232): 73 Yeas, 68 Nays, 4 Present, not voting.

Yeas — Alexander; Alvarado; Averitt; Berlanga; Bosse; Brimer; Carter; Chisum; Christian; Cook; Counts; Cuellar; Danburg; Dunnam; Eiland; Farrar; Flores; Gallego; Glaze; Goodman; Gray; Greenberg; Gutierrez; Haggerty; Hawley; Hernandez; Hightower; Hilbert; Hirschi; Hochberg; Horn; Jackson; Jones, D.; Junell; Keel; Keffer; King; Krusee; Lewis, R.; McReynolds; Moffat; Moreno; Mowery; Naishtat; Oakley; Olivo; Palmer; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Reyna, A.; Rhodes; Roman; Sadler; Serna; Smith; Solis; Staples; Stiles; Swinford; Telford; Thompson; Van de Putte; Williamson; Wilson; Wise; Wohlgemuth; Yarbrough.

Nays — Allen; Bailey; Bonnen; Burnam; Chavez; Clark; Corte; Crabb; Craddick; Culberson; Davila; Davis; Delisi; Denny; Driver; Edwards; Ehrhardt; Elkins; Galloway; Garcia; Giddings; Goolsby; Grusendorf; Hamric; Heflin; Hilderbran; Hill; Hinojosa; Hodge; Holzheuser; Howard; Hunter; Hupp; Isett; Janek; Jones, J.; Kamel; Kubiak; Kuempel; Lewis, G.; Longoria; Luna; Madden; Marchant; McCall; McClendon; Merritt; Nixon; Oliveira; Patterson; Raymond; Reyna, E.; Seaman; Shields; Siebert; Smithee; Solomons; Talton; Tillery; Torres; Turner, B.; Turner, S.; Uher; Walker; West; Williams; Woolley; Zbraneck.

Present, not voting — Mr. Speaker(C); Finnell; Hartnett; Wolens.

Absent, Excused — Dukes.

Absent — Coleman; Dutton; Maxey.

The speaker stated that the motion to table prevailed by the above vote.

STATEMENT OF VOTE

When Record No. 232 was taken, my vote failed to register. I would have voted no.

Coleman

STATEMENT BY REPRESENTATIVE FINNELL

I voted "present not voting" on Amendment No. 68 because I am a 50 percent owner of a small business which is a general partnership doing business in Texas since 1960, Finnell Brothers, which endeavors to produce crude oil in Northwest Texas.

Finnell

STATEMENT BY SPEAKER LANEY

The speaker submitted the following statement to be entered in the journal for the record:

Mr. Nixon has made a parliamentary inquiry concerning the effect of Rule 5, Section 22, which requires a member who has a "personal or private interest" in a measure to disclose that fact and not vote on the measure. The rule derives from Article 3, Section 22 of the Texas Constitution.

Consistent with prior precedents of this house, the chair advises the house that the rule requires that a member not vote only if the measure before the house is particularly personal to the member. For example, a member should not vote in an election contest for his own seat. Because Article 3, Section 56, of the Texas Constitution prohibits most special laws, such as granting a divorce, it is rare that a measure before this body will present an issue that is "particularly personal" to an individual member.

To the extent that **HB 4** affects the professions engaged in or businesses owned by members of this house—such as lawyers or business partnerships—**HB 4** affects those members in the same manner as all other persons engaged in the same profession or business. Accordingly, neither the rules nor the constitution would appear to require a member to abstain from voting.

Ultimately, the determination of whether a member has a personal or private interest in **HB 4** to the extent that the member should not vote is a matter of individual conscience of the member that will not be challenged by the chair and may not be challenged outside the legislative process itself.

[See House Journal, 71st Legislature, Second Called Session, at 339(1989)]

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today because of personal business:

Dutton on motion of Farrar.

CSHB 4 - (consideration continued)**Amendment No. 71**

Representative Smithee offered the following amendment to **CSHB 4**:

Floor Packet Page No. 228

Amend **CSHB 4** as follows:

On page 159, delete lines 18-20, and renumber paragraphs accordingly.

On page 177, line 8, strike "\$100,000," and substitute "\$1,000,000".

On pages 178-179, delete Section 3.181 in its entirety.

(Berlanga in the chair)

Amendment No. 72

Representatives Smithee and Greenberg offered the following amendment to Amendment No. 71:

Amend the Smithee Amendment to **CSHB 4** to read as follows:

(1) On page 150, strike lines 1-27 and on page 151, strike lines 1-4.

(2) On page 151, in SECTION 3.01, renumber Subdivisions (16)-(19) of amended Section 171.001(a), Tax Code, as Subdivisions (12)-(15).

(3) On page 159, strike lines 18-26 and substitute:

"(2) apportioning the taxable entity's taxable capital to this state as provided by Section 171.106(a) to determine the entity's apportioned taxable capital; and

(3) subtracting from the amount computed under Subdivision (2) any other allowable deductions to determine the taxable entity's net taxable capital."

(4) On page 173, strike lines 9-14 and substitute:

"(C) subtracting dividends received from a"

(5) On page 173, line 19, strike "(E)" and substitute "(D)".

(6) On page 177, strike line 8, and substitute "\$200,000 in guaranteed payments made to, and ordinary income from trade or business activities allocated to, each partner;".

(7) On page 178, strike lines 11-27 and on page 179, strike lines 1-8.

(8) Add to Article 4 an appropriately numbered SECTION to read as follows:

SECTION 4.____. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3112 to read as follows:

Sec. 151.3112. MOTOR VEHICLE REPAIR SERVICES: MINIMUM CHARGES EXEMPTED. The first \$50 of the total sale price for the labor to perform a motor vehicle repair service is exempted from the taxes imposed by this chapter. For purposes of this section, any motor vehicle repair service performed by the same person on the same vehicle within a seven-day period is considered to be one motor vehicle repair service.

(9) Renumber subsequent sections of the bill appropriately.

Representative Craddick moved to table Amendment No. 72.

A record vote was requested.

The motion to table prevailed by (Record 233): 81 Yeas, 56 Nays, 8 Present, not voting.

Yeas — Alexander; Allen; Brimer; Carter; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Craddick; Culbertson; Delisi; Denny; Driver; Eiland; Farrar; Galloway; Glaze; Goodman; Goolsby; Grusendorf; Haggerty; Hamric; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hinojosa; Holzheuser; Howard; Hunter; Hupp; Isett; Jackson; Janek; Junell; Kamel; Keel; Keffer; King; Krusee; Kuempel; Lewis, G.; Lewis, R.; McCall; McReynolds; Merritt; Moffat; Mowery; Nixon; Oakley; Palmer; Pitts; Price; Rabuck; Ramsay; Rhodes; Sadler; Seaman; Siebert; Smith; Solis; Solomons; Staples; Stiles; Swinford; Telford; Thompson; Torres; Walker; West; Williams; Williamson; Wohlgemuth; Woolley; Zbranek.

Nays — Alvarado; Averitt; Bailey; Bonnen; Bosse; Burnam; Chavez; Crabb; Cuellar; Danburg; Davila; Davis; Dunnam; Edwards; Ehrhardt; Flores; Gallego; Giddings; Gray; Greenberg; Gutierrez; Hartnett; Hirschi; Hochberg; Hodge; Horn; Jones, D.; Jones, J.; Kubiak; Longoria; Luna; Madden; Maxey; McClendon; Moreno; Naishtat; Oliveira; Olivo; Patterson; Pickett; Place; Puente; Rangel; Raymond; Reyna, A.; Reyna, E.; Serna; Smithee; Tillery; Turner, B.; Turner, S.; Uher; Van de Putte; Wise; Wolens; Yarbrough.

Present, not voting — Mr. Speaker; Berlanga(C); Elkins; Finnell; Garcia; Marchant; Shields; Talton.

Absent, Excused — Dukes; Dutton.

Absent — Roman; Wilson.

(Speaker in the chair)

Amendment No. 71 was withdrawn.

Amendment No. 73

Representative Elkins offered the following amendment to **CSHB 4**:
Floor Packet Page No. 236

Amend **CSHB 4** as follows:

- (1) On page 192, by striking lines 24-25.
- (2) On page 192, line 26, by striking "(c)" and substituting "(b)".

Representative Junell moved to table Amendment No. 73.

The motion to table prevailed.

Amendment No. 74

Representative Finnell offered the following amendment to **CSHB 4**:
Floor Packet Page No. 238

Amend **CSHB 4** as follows:

- (1) On page 215, line 8, strike "Section 151.00335" and substitute "Sections 151.00335 and 151.00336".
- (2) On page 216, between lines 3 and 4, insert the following:
Sec. 151.00336. "CUSTOMIZING OF VEHICLE." "Customizing of vehicle" includes any customizing services, including window tinting, performed on a motor vehicle, truck, airplane, boat, ship, or other type of vehicle.
- (3) On page 227, strike lines 23 and 24 and substitute the following:
(33) oil well service; and
(34) customizing of vehicle.
- (4) On page 245, strike lines 8-9 and substitute:
(11) diving services;
(12) notary services; and
(13) customizing of vehicle.

Amendment No. 74 was adopted.

Amendment No. 75

Representative Haggerty offered the following amendment to **CSHB 4**:
Floor Packet Page No. 239

Amend **CSHB 4** in Section 4.05 in the proposed Subsection (b) of the proposed Section 151.00335, Tax Code, by renumbering subdivision (3) as (4) and inserting a new subdivision (3) to read as follows:

(3) engineering testing performed under the supervision of a licensed professional engineer as part of an engineering project; or

Amendment No. 75 was withdrawn.

Amendment No. 76

Representative Stiles offered the following amendment to **CSHB 4**:

Floor Packet Page No. 240

Amend **CSHB 4** as follows:

1. Strike SECTION 4.08 (page 216, line 25 - page 217, line 10) and renumber the remaining SECTIONS accordingly.
2. On page 219, strike lines 14-24 (new Section 151.00441, Tax Code).
3. On page 227, line 30, strike "(30) notary services;" and renumber the remaining items accordingly.
4. On page 229, line 10, strike "coin operated lockers and".
5. On page 245, lines 8 and 9, strike "; and (12) notary services." and substitute ".".
6. On page 386, line 17, insert the following after "pleasure" and before the period: "and includes coin operated lockers".
7. On page 394, line 9, insert the following as SECTION 22.02 and renumber the remaining SECTION accordingly;

SECTION 22.02. The comptroller shall adopt, amend, or repeal rules on an emergency basis under Section 2001.034, Government Code, as necessary or appropriate to implement each provision of this Act on its effective date. This section is a requirement of state law for the purposes of Section 2001.034(a)(1), Government Code. In this section, "rule" has the meaning assigned by Section 2001.003(6), Government Code.

Amendment No. 77

Representative Stiles offered the following amendment to Amendment No. 76:

Amend Floor Amendment No. 76 to **CSHB 4** by adding a new No. 7 as follows and renumbering accordingly:

7. On page 387, line 6, insert the following after "\$60.00.": "An annual occupation tax of \$30.00 is imposed on each coin operated locker."

Amendment No. 77 was withdrawn.

Amendment No. 76 was withdrawn.

Amendment No. 78

Representative Merritt offered the following amendment to **CSHB 4**:

Floor Packet Page No. 244

Amend **CSHB 4** as follows:

- (1) On page 217, line 13, strike "151.00441, 151.00442, and 151.00443" and substitute "151.00441, and 151.00443".
- (2) On page 219, strike lines 25-27 and on page 220, strike lines 1-17.
- (3) On page 227, strike lines 21-24, and substitute the following:
 - (31) sludge disposal services; and
 - (32) low-level radioactive waste disposal services.

- (4) On page 234, strike lines 19-25 and substitute the following:
 (8) oil well service as taxed by Subchapter E, Chapter 191; ~~[and]~~
 (9) insurance premiums subject to gross premiums taxes;
(10) aviation fuel as defined, taxed, or exempted by Chapter 161; and
(11) coal as taxed by Chapter 162.
- (5) On page 245, strike lines 5-9, and substitute the following:
(8) warehouse or storage services;
(9) boat dock services;
(10) diving services; and
(11) notary services.
- (6) On page 275, strike lines 2-4, and substitute the following:
 (5) Section 151.320; and
 (6) Sections 151.328(f) and (g).

Representative Williamson moved to table Amendment No. 78.

A record vote was requested.

The motion to table prevailed by (Record 234): 74 Yeas, 67 Nays, 3 Present, not voting.

Yeas — Alexander; Alvarado; Averitt; Bailey; Bosse; Carter; Chisum; Coleman; Cook; Danburg; Davila; Davis; Delisi; Dunnam; Edwards; Ehrhardt; Eiland; Farrar; Flores; Gallego; Garcia; Giddings; Glaze; Goodman; Greenberg; Gutierrez; Haggerty; Hernandez; Hightower; Hilbert; Hirschi; Hochberg; Horn; Junell; Keel; King; Krusee; Lewis, G.; Lewis, R.; Longoria; Luna; Maxey; McCall; McClendon; McReynolds; Moffat; Moreno; Naishtat; Oakley; Oliveira; Pickett; Place; Price; Puente; Ramsay; Rangel; Reyna, A.; Reyna, E.; Sadler; Serna; Solis; Solomons; Stiles; Telford; Thompson; Tillery; Turner, S.; Van de Putte; Williamson; Wilson; Wise; Wolens; Yarbrough; Zbranek.

Nays — Allen; Bonnen; Brimer; Burnam; Chavez; Christian; Clark; Corte; Counts; Crabb; Craddick; Cuellar; Culberson; Denny; Driver; Elkins; Galloway; Goolsby; Gray; Grusendorf; Hamric; Hawley; Heflin; Hilderbran; Hill; Hodge; Holzheuser; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Jones, J.; Kamel; Keffer; Kubiak; Kuempel; Madden; Marchant; Merritt; Mowery; Nixon; Olivo; Palmer; Patterson; Pitts; Rabuck; Raymond; Rhodes; Roman; Seaman; Shields; Siebert; Smith; Smithee; Staples; Swinford; Talton; Torres; Turner, B.; Uher; Walker; West; Williams; Woolley.

Present, not voting — Mr. Speaker(C); Finnell; Wohlgemuth.

Absent, Excused — Dukes; Dutton.

Absent — Berlanga; Hartnett; Hinojosa.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 234. I intended to vote no.

Delisi

When Record No. 234 was taken, my vote failed to register. I would have voted no.

Hartnett

I was shown voting yes on Record No. 234. I intended to vote no.

King

STATEMENT BY REPRESENTATIVE FINNELL

I voted "present not voting" on the Merritt Amendment No. 78 because our family partnership may use well-servicing in the future.

Finnell

Amendment No. 79

Representative Stiles offered the following amendment to **CSHB 4**:
Floor Packet Page No. 240

Amend **CSHB 4** as follows:

1. Strike SECTION 4.08 (page 216, line 25 - page 217, line 10) and renumber the remaining SECTIONS accordingly.
2. On page 219, strike lines 14 - 24 (new Section 151.00441, Tax Code).
3. On page 227, line 30, strike "(30) notary services;" and renumber the remaining items accordingly.
4. On page 229, line 10, strike "coin operated lockers and".
5. On page 245, lines 8 and 9, strike "; and (12) notary services." and substitute ".".
6. On page 386, line 17, insert the following after "pleasure" and before the period: "and includes coin operated lockers".
7. On page 394, line 9, insert the following as SECTION 22.02 and renumber the remaining SECTION accordingly;

SECTION 22.02. The comptroller shall adopt, amend, or repeal rules on an emergency basis under Section 2001.034, Government Code, as necessary or appropriate to implement each provision of this Act on its effective date. This section is a requirement of state law for the purposes of Section 2001.034(a)(1), Government Code. In this section, "rule" has the meaning assigned by Section 2001.003(6), Government Code.

Amendment No. 80

Representatives Stiles and Madden offered the following amendment to Amendment No. 79:

Amend the Stiles Amendment to **CSHB 4** as follows:

- (1) Add a new item to read as follows:

() On page 387, line 6, insert the following after "\$60.00.":
In lieu of the \$60.00 occupation tax, an annual occupation tax of \$30.00 is imposed on each coin operated locker."

- (2) Strike added Section 22.02 and substitute a new Section 22.02 to read as follows:

SECTION 22.02. The comptroller shall adopt, amend, or repeal rules on an emergency basis under Section 2001.034, Government Code, as necessary or appropriate to implement each provision of this Act relating to taxation on its effective date. This section does not authorize the comptroller to adopt rules relating to education or the Texas Education Agency. This section is a requirement of state law for the purposes of Section 2001.034(a)(1), Government Code. In this section, "rule" has the meaning assigned by Section 2001.003(6), Government Code.

Amendment No. 80 was adopted without objection.

Amendment No. 79, as amended, was adopted without objection.

Amendment No. 81

Representative Shields offered the following amendment to **CSHB 4**:

Floor Packet Page No. 251

Amend **CSHB 4**, Article 4, Section 4.09, page 218, strike lines 18 through 20, and insert the following language:

(2) All professional services provided by any entity or individual subject to the Public Accountancy Act of 1991, enrolled agents, or bookkeeping firm.

Representative Stiles moved to table Amendment No. 81.

The motion to table prevailed.

Amendment No. 82

Representative Shields offered the following amendment to **CSHB 4**:

Floor Packet Page No. 250

Amend **CSHB 4** as follows:

(1) On page 218, line 17, strike "or".

(2) On page 218, line 19, strike "to produce financial reports or prepare tax returns."

(3) On page 218, line 19, insert the following after the word "firm":

":or

(3) consulting services provided by a certified public accountant, a certified public accountant's staff, or a certified public accountant's firm."

Amendment No. 83

Representative Shields offered the following amendment to Amendment No. 82:

Amend the Shields Amendment (page 250, amendment package) to **CSHB 4** by striking the text on page 1, lines 2-10 and substituting the following:

(1) On page 217, line 12, strike "151.0044".

(2) Strike page 217, line 18, through page 218, line 20.

(3) On page 218, line 21, strike "151.0043" and substitute "151.0042".

(4) On page 219, line 3, strike "151.0044" and substitute "151.0043".

(5) Strike page 227, lines 6-7, and renumber the subsequent added subdivisions of Section 151.0101(a), Tax Code, appropriately.

(6) Add a new Article to the bill to read as follows:

ARTICLE _____. PUBLIC ACCOUNTANT PROFESSIONAL FEE

SECTION _____.01. Section 9A, Public Accountancy Act of 1991 (Article 41a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9A. INCREASE IN FEES. (a) Each of the following fees imposed by or under another section of this Act is increased by \$500 [\$200]:

(1) biennial license fee under Section 9(b) of this Act for Certified Public Accountants;

(2) renewal fee under Section 9(b) of this Act for Certified Public Accountants; and

(3) fee for issuance of a certificate of Certified Public Accountant under Section 13 of this Act.

(b) In addition to the fee imposed under Subsection (a) of this section, an additional biennial fee of \$500 [\$200] is imposed. The fee is due on the anniversary of the date on which a biennial license fee or renewal fee under Section 9(b) of this Act for Certified Public Accountants is due in each year in which the person is not required to pay a license fee or renewal fee under Section 9(b) of this Act. At least 30 days before the date the fee is due, the board shall send written notice that the fee is due to the licensee on whom the fee is imposed at the licensee's last known address according to the records of the board. The board shall establish a late fee of not less than \$50 and shall impose this late fee on a licensee who not does pay the additional biennial fee under this subsection on or before the date the fee is due. The board by rule may impose additional late fees. A licensee who does not pay the additional biennial fee and all late fees before the first anniversary of the due date of the additional biennial fee may only receive a renewal license by submitting an application, all accrued fees, and the direct administrative costs incurred by the board in using the renewal license. The board shall by rule provide the information that must be contained in the application. The board shall have no authority to waive the collection of any fee or penalty.

(c) Of each fee increase collected, \$125 [\$50] shall be deposited to the credit of the foundation school fund and \$375 [\$150] shall be deposited to the credit of the general revenue fund. This subsection applies to the disposition of each fee increase regardless of any other provision of law providing for a different disposition of funds.

SECTION _____.02. This article takes effect September 1, 1997, and applies to a fee imposed on or after that date. A fee imposed before the effective date of this article is governed by the law in effect on that date, and that law is continued in effect for that purpose.

Representative Stiles moved to table Amendment No. 83.

The motion to table prevailed.

Amendment No. 82 was withdrawn.

Amendment No. 84

Representative Brimer offered the following amendment to **CSHB 4**:
Floor Packet Page No. 246

Amend **CSHB 4** as follows:

SECTION 4.10 of the Act is amended solely as it relates to Section 151.0043, Tax Code, which shall read as follows:

SEC. 151.0043. "MANAGEMENT, CONSULTING, OR PUBLIC RELATIONS SERVICES." (a) "Management, consulting or public relations services: includes:

(1) directing, analyzing, evaluating, or giving advice about the management of a business, including:

(A) business operations;

(B) organizational structure;

- (C) financial planning and budgeting;
- (D) business strategies and marketing objectives and policies;
- (E) information systems, including software engineering;
- (F) human resources and employee management policies, practices; and planning; and
- (G) production scheduling and control processes;
- (2) facilities support management services
- (3) services to determine or influence the opinion or sentiments of the public or specific individuals, governmental officials, or groups, including services the performance of which would require a person to be registered under Chapter 305, Government Code; and
- (4) services relation to gathering or compiling economic, sociological, consumer, or other information.
- (b) "Management, consulting, or public relations services" does not include, except for services provided to a client for which registration is required under Chapter 305, Government Code:
 - (1) legal services provided by an attorney
 - (2) accounting services provided by a certified public accountant, enrolled agent, or bookkeeping firm to produce financial reports or prepare tax returns; or
 - (3) services provided by an attorney-in-fact for a reciprocal exchange authorized by Chapter 19, Insurance Code.

Amendment No. 85

Representative Hunter offered the following amendment to Amendment No. 84:

Amend the Brimer Amendment to **CSHB 4** (page 246 of the amendment package) to read as follows:

Amend **CSHB 4** on page 218 by adding appropriately numbered subdivisions to Section 151.0042(b), Tax Code, as added by SECTION 4.09 of the bill to read as follows:

() services provided by an attorney-in-fact for a reciprocal exchange authorized by Chapter 19, Insurance Code; or

() actuarial services provided by an actuary who is:

(A) a member of the American Academy of Actuaries, a fellow of the Society of Actuaries, or a member of a similar nationally recognized organization that accredits or certifies actuaries; or

(B) an enrolled actuary under the Retirement Income Security Act of 1974 (U.S.C. Sec. 1001 et.seq.)

Amendment No. 85 was adopted without objection.

Amendment No. 84, as amended, was adopted without objection.

Amendment No. 86

Representative Serna offered the following amendment to **CSHB 4**:

Floor Packet Page No. 252

Amend **CSHB 4** as follows:

- (1) On page 218, line 17, strike "or".
- (2) On page 218, line 20, strike the underlined period and substitute an underlined semicolon.
- (3) On page 218, between lines 20 and 21, insert the following:
(3) customs brokerage consulting, entry processing, and record keeping services licensed by the United States Customs Service; or
- (4) air, land, or ocean freight forwarding services.

Amendment No. 86 was adopted without objection.

Amendment No. 87

Representative Uher offered the following amendment to **CSHB 4**:

Floor Packet Page No. 254

Amend **CSHB 4** Section 4.11 by adding subsections (b) and (c) at the bottom of page 222 of **CSHB 4** which will amend existing subsections (b) and (c) of Section 151.0048(b) and (c) Tax Code to read as follows:

(b) "Real property service" does not include a service listed under Subsection (a) if the service is purchased by a contractor as part of the improvement of real property with a new structure ~~(to be used as a residence)~~ or other improvement immediately adjacent to the new structure and used in the ~~(residential)~~ occupancy of the structure.

(c) In this section, "contractor" means a person who makes an improvement on real estate and who, as a necessary or incidental part of the service, incorporates tangible personal property into the property improved. The term includes a builder, developer, speculative builder, landscaper, or other person acting as a builder to improve real property.

Representative Stiles moved to table Amendment No. 87.

The motion to table prevailed.

Amendment No. 88

Representative Isett offered the following amendment to **CSHB 4**:

Floor Packet Page No. 255

Amend **CSHB 4** as follows:

- (1) On page 225, lines 2 and 3, strike "transportation, warehouse or storage, or appraisal" and substitute "transportation or appraisal".
- (2) On page 227, strike lines 13-24, and substitute the following:
"(24) boat dock services;
(25) secretarial or mailing services;
(26) diving services;
(27) sanitizing, sterilizing, or disinfection services;
(28) patent brokerage;
(29) notary services;
(30) sludge disposal services;
(31) low-level radioactive waste disposal services; and
(32) oil well service."

(3) On page 228, line 27, and on page 229, lines 1-17, strike SECTION 4.18 of the bill.

(4) On page 230, line 26, strike "or warehouse or storage service".

(5) On page 245, strike lines 6-9, and substitute the following:

"(9) boat dock services;

(10) diving services; and

(11) notary services."

(6) Renumber the remaining sections of Article 4 appropriately.

Amendment No. 89

Representative Palmer offered the following amendment to Amendment No. 88:

Amend the Isett Amendment to **CSHB 4** (page 255 of the amendment book) to read as follows:

(1) On page 225, lines 2 and 3, strike "transportation, warehouse or storage, or appraisal service," and substitute "appraisal service,".

(2) On page 227, line 10, strike "(21) transportation services;", and on line 13, strike "(24) warehouse or storage services;", renumber the remaining Subdivisions appropriately.

(3) On page 228, line 9, through page 229, line 17, strike SECTIONS 4.17 and 4.18 of the bill.

(4) On page 230, line 22, strike "Subsections (e) and (f)" and substitute "Subsection (e)".

(5) On page 230, strike lines 26 and 27, and on page 231, strike lines 1 and 2.

(6) On page 235, strike line 16 and renumber the remaining Subdivisions appropriately.

(7) On page 235, line 20, strike "and adding Subsection (e)".

(8) On page 237, strike lines 17-22.

(9) On page 239, line 23, strike "Subsections (r) and (s)" and substitute "Subsection (r)".

(10) On page 241, strike lines 21-27.

(11) On page 245, strike line 6 and renumber the remaining Subdivisions appropriately.

(12) Renumber remaining Sections of Article 4 appropriately.

Representative Stiles moved to table Amendment No. 89.

The motion to table prevailed.

Representative Stiles moved to table Amendment No. 88.

The motion to table prevailed.

Amendment No. 90

Representative Serna offered the following amendment to **CSHB 4**:
Floor Packet Page No. 257

Amend **CSHB 4**, on page 227, line 3, by adding after "(16)" the words "fees in excess of 150 dollars for".

Amendment No. 91

Representatives Oliveira and Bailey offered the following amendment to Amendment No. 90:

Amend the Serna amendment to **CSHB 4** (page 257 of the amendment book) as follows:

Amend **CSHB 4** as follows:

(1) On page 227, line 3, between "(16)" and "motor", insert "fees in excess of \$100 for".

(2) On page 159, line 20, between "capital" and the semicolon, insert "not to exceed \$100,000".

(3) On page 178, line 19, between "income" and "included", insert "not to exceed \$100,000".

Representative Craddick moved to table Amendment No. 91.

A record vote was requested.

The motion to table prevailed by (Record 235): 78 Yeas, 58 Nays, 6 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bonnen; Brimer; Carter; Chisum; Christian; Cook; Corte; Counts; Crabb; Craddick; Culberson; Delisi; Denny; Driver; Eiland; Elkins; Goodman; Goolsby; Gray; Grusendorf; Haggerty; Hamric; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Holzheuser; Howard; Hunter; Hupp; Isett; Jackson; Janek; Junell; Keel; Keffer; King; Krusee; Kuempel; Lewis, G.; Lewis, R.; Marchant; McCall; McReynolds; Merritt; Moffat; Mowery; Nixon; Oakley; Palmer; Pitts; Price; Puente; Rabuck; Ramsay; Rangel; Reyna, A.; Rhodes; Shields; Siebert; Smith; Solomons; Staples; Stiles; Swinford; Telford; Turner, B.; Uher; Walker; West; Wohlgemuth; Woolley.

Nays — Alvarado; Bailey; Bosse; Burnam; Chavez; Clark; Coleman; Danburg; Davila; Davis; Dunnam; Edwards; Ehrhardt; Farrar; Finnell; Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Greenberg; Gutierrez; Hinojosa; Hirschi; Hochberg; Hodge; Horn; Jones, J.; Kubiak; Longoria; Luna; Maxey; McClendon; Naishtat; Oliveira; Olivo; Patterson; Pickett; Place; Raymond; Reyna, E.; Roman; Sadler; Serna; Smithee; Solis; Thompson; Tillery; Torres; Turner, S.; Van de Putte; Williamson; Wilson; Wise; Wolens; Yarbrough; Zbrank.

Present, not voting — Mr. Speaker(C); Hartnett; Madden; Seaman; Talton; Williams.

Absent, Excused — Dukes; Dutton.

Absent — Berlanga; Cuellar; Jones, D.; Kamel; Moreno.

Amendment No. 92

Representatives Hamric and Chavez offered the following amendment to Amendment No. 90:

Amend the Serna amendment to **CSHB 4** (page 257 of the amendment book) as follows:

Amend **CSHB 4** as follows:

(1) On page 227, line 3, between "(16)" and "motor", insert "fees in excess of \$100 for".

(Junell in the chair)

Amendment No. 93

Representative Wilson offered the following substitute amendment for Amendment No. 92:

Substitute the following for the Chavez Amendment to the amendment to **CSHB 4** (page 257 of the amendment book):

Amend **CSHB 4** as follows:

(1) On page 227, line 3, between "(16)" and "motor", insert "fees in excess of \$100 for".

(2) Add a new item to read as follows:

() On page 214 add between lines 14 and 15 the following:

SECTION 4.021. Subchapter A Chapter 151, Tax Code, is amended by adding Section 151.00291 to read as follows:

Sec. 151.00291. "ADVERTISING SERVICES". "Advertising services" means the service of announcing, publicizing, or otherwise bringing attention to an activity, event, product, service, issue, opportunity, message, or person. "Advertising services" includes:

(1) providing space in a newspaper, magazine, publication, or other type of print media;

(2) providing air time for a radio or television broadcast, including a cable television broadcast;

(3) providing space on billboards, banners, signs, screens, or other displays, regardless of whether on a separate structure or affixed or attached to a vehicle, aircraft, building, sports facility, or other public or private structure;

(4) transmitting a message, announcement, or information electronically.

(3) On page 227, strike lines 23 and 24 and substitute the following:

(33) oil well services; and

(34) advertising services.

(4) On page 245, strike line 9, and substitute the following:

(12) notary services; and

(13) advertising services.

Amendment No. 93 failed of adoption.

Amendment No. 92 was adopted without objection.

Amendment No. 90, as amended, was adopted without objection.

(Speaker in the chair)

Amendment No. 94

Representative Oliveira offered the following amendment to **CSHB 4**:
Floor Packet Page No. 260

Amend **CSHB 4** by inserting the following appropriately numbered sections in Article 4 of the bill and renumbering existing sections in Article 4 accordingly:

SECTION 4.__. Subchapter A, Chapter 151, Tax Code, is amended by adding Section 151.01032 to read as follows:

Sec. 151.01032. "TELEPHONE PREPAID CALLING CARD". "Telephone prepaid calling card" means a card or other item, including an access code, that represents the right to make one or more telephone calls for which payment is made in incremental amounts and before the call is initiated.

SECTION 4.__. Section 151.009, Tax Code, is amended to read as follows:

Sec. 151.009. "TANGIBLE PERSONAL PROPERTY". "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is perceptible to the senses in any other manner, and, for the purposes of this chapter, the term includes a computer program and a telephone prepaid calling card.

SECTION 4.__. Section 151.0103, Tax Code, is amended to read as follows:

Sec. 151.0103. TELECOMMUNICATIONS SERVICES. (a) For the purposes of this title only, "telecommunications services" means the electronic or electrical transmission, conveyance, routing, or reception of sounds, signals, data, or information utilizing wires, cable, radio waves, microwaves, satellites, fiber optics, or any other method now in existence or that may be devised, including but not limited to long-distance telephone service. The term does not include:

(1) the [The] storage of data or information for subsequent retrieval or the processing, or reception and processing, of data or information intended to change its form or content; or

(2) the sale or use of a telephone prepaid calling card.

(b) The sale or use of a telephone prepaid calling card is considered to be a sale or use of tangible personal property. [are not included in "telecommunications services."]

Amendment No. 94 was adopted without objection.

Amendment No. 95

Representative Cuellar offered the following amendment to **CSHB 4**:

Floor Packet Page No. 262

Amend **CSHB 4** as follows:

(1) On page 228, lines 23 and 24, strike "include transportation" and substitute the following:
include:

(1) transportation

(2) On page 228, line 26, strike the underlined period and substitute "; or".

(3) On page 228, between lines 26 and 27, insert the following:

(2) transportation of goods considered to be in or offered into the stream of foreign commerce, either imported or intended for export, including United States Customs bonded or cleared cargoes.

Amendment No. 95 was adopted without objection.

Amendment No. 96

Representative Williamson offered the following amendment to **CSHB 4**:
Floor Packet Page No. 263

Amend **CSHB 4** as follows:

(1) On page 228, lines 23 and 24, strike "include transportation" and substitute the following:

"include:

(1) transportation."

(2) On page 228, line 26, strike "Chapter 192." and substitute the following:

"Chapter 192; or

(2) the transportation of hydrocarbons by means of a pipe."

(3) On page 362, strike lines 20-25 and substitute the following:

"(2) "Business" means:

(A) selling [the providing of] gas, electric light, electric power, or water to any person for any use, other than for resale to another person; or

(B) transporting or providing transportation of gas, electric light, electric power, or water to any person for any use, other than for resale to another person.

(3) "Resale" does not include the sale of gas to a person for use, consumption, or resale outside this state."

(4) On page 363, strike lines 19 and 20 and substitute the following:

"SECTION 12.04. Sections 182.023 and 182.024, Tax Code, are amended to read as follows:

Sec. 182.023. PAYMENT OF TAX. Only one service [utility] company pays the tax on a commodity. If the commodity is produced by one service [utility] company and distributed by another, the distributor pays the tax."

(5) On page 364, strike line 13 and substitute the following:

"SECTION 12.06. Article 6060, Revised Statutes, is repealed."

(6) On page 379, line 16, strike "include" and substitute "have attached".

Amendment No. 97

Representatives Bailey and Edwards offered the following amendment to Amendment No. 96:

Amend the Williamson Amendment to **CSHB 4** (page 263 of the amendment book) as follows:

(1) Add a new item appropriately numbered to read as follows:

() On page 362, strike lines 8-9, and Substitute:

SUBCHAPTER B. GAS AND ELECTRIC SERVICE
[UTILITY] COMPANIES

(2) On page 1 of the amendment, line 15, strike "light, electric power, or water" and substitute "light, or electric power [~~or water~~].

(3) On page 1 of the amendment, line 19, strike "light, electric power, or water" and substitute "light, or electric power".

(4) Add a new item appropriately numbered to read as follows:

() On page 364, strike lines 2-5 and substitute "sale of natural gas to an electric utility company [a]".

- (5) Add a new item item appropriately numbered to read as follows:
() On page 360, line 15, strike "\$30.50" and substitute "\$33.00".

Amendment No. 97 was adopted without objection.

Amendment No. 96, as amended, was adopted without objection.

Amendment No. 98

Representative Gray offered the following amendment to **CSHB 4**:
Floor Packet Page No. 265

Amend **CSHB 4** as follows:

1) On page 228, line 26, after the words "Chapter 192.", strike "." and substitute ","

2) On page 228, line 26, after the words "Chapter 192.", add the following:
or the transportation of tangible personal property by means of a barge.

Amendment No. 99

Representative Gray offered the following amendment to Amendment No. 98:

Amend the Gray amendment to **CSHB 4** to read as follows:

Amend **CSHB 4** on page 228, between lines 26 and 27, by inserting:

(c) "Transportation services" does not include:

(1) transportation of tangible personal property by means of a barge;
or

(2) marine towing and tugboat services.

Amendment No. 99 was adopted without objection.

Amendment No. 98, as amended, was adopted without objection.

Amendment No. 100

Representative Williamson offered an amendment (Floor Packet Page No. 268) to **CSHB 4**.

Amendment No. 100 was withdrawn.

Amendment No. 101

Representative Cuellar offered the following amendment to **CSHB 4**:
Floor Packet Page No. 267

Amend **CSHB 4** as follows:

(1) On page 229, strike lines 8-9, and substitute "limits access to the storage area."

(2) On page 229, at the end of line 14, after the semicolon, strike "or".

(3) On page 229, line 17, strike the underlined period and substitute "; or".

(4) On page 229, between lines 17 and 18, insert the following:
(3) storage or warehousing of import or export products without regard to whether the storage facility or warehouse is located in a foreign trade zone, but only while the warehoused product remains in the stream of international commerce.

Amendment No. 101 was adopted without objection

Amendment No. 102

Representatives Craddick and Stiles offered the following amendment to **CSHB 4**:

Floor Packet Page No. 269

Amend **CSHB 4** as follows:

(1) On page 229, line 18, insert the following: "(3) The storage of natural gas, hazardous liquids, petroleum products or any chemical product."

Amendment No. 102 was adopted without objection.

Amendment No. 103

Representative Merritt offered the following amendment to **CSHB 4**:

Floor Packet Page No. 270

Amend **CSHB 4** as follows:

(1) On page 229, lines 18-27, and page 230, lines 1-20, strike SECTIONS 4.19, 4.20, 4.21, and 4.22 of the bill.

(2) On page 237, lines 23-27, page 238, lines 1-27, and page 239, lines 1-21, strike SECTION 4.30 of the bill.

(3) On page 246, lines 13-27, and page 247, lines 1-8, strike SECTIONS 4.37 and 4.38 of the bill.

(4) Renumber the remaining SECTIONS of Article 4 appropriately.

Representative Stiles moved to table Amendment No. 103.

The motion to table was lost.

STATEMENT BY REPRESENTATIVE FINNELL

I voted "present not voting" on the motion to table the Merritt amendment No. 103 because my family partnership may operate such marginal wells in the future.

Finnell

A record vote was requested.

Amendment No. 103 failed of adoption by (Record 236): 38 Yeas, 103 Nays, 3 Present, not voting.

Yeas — Allen; Bonnen; Christian; Crabb; Culberson; Driver; Hawley; Heflin; Hilderbran; Hill; Hirschi; Hodge; Holzheuser; Hupp; Isett; Jones, J.; Keffer; King; Kubiak; Madden; Merritt; Rabuck; Raymond; Rhodes; Seaman; Shields; Smith; Smithee; Staples; Swinford; Talton; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williams.

Nays — Alexander; Alvarado; Averitt; Bailey; Berlanga; Bosse; Brimer; Carter; Chavez; Chisum; Clark; Coleman; Cook; Counts; Craddick; Cuellar; Davila; Davis; Delisi; Denny; Dunnam; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hernandez; Hightower; Hilbert; Hinojosa; Hochberg; Horn; Hunter; Jackson; Janek; Jones, D.; Junell; Kamel; Keel; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Marchant; Maxey; McCall; McClendon; McReynolds; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Price; Puente; Ramsay; Rangel; Reyna, A.; Reyna, E.; Roman; Sadler; Serna; Siebert; Solis; Solomons; Stiles; Telford; Thompson; Tillery; Torres; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C); Finnell; Howard.

Absent, Excused — Dukes; Dutton.

Absent — Burnam; Corte; Danburg.

STATEMENTS OF VOTE

When Record No. 236 was taken, my vote failed to register. I would have voted no.

Burnam

When Record No. 236 was taken, I was in the house but away from my desk. I would have voted yes.

Corte

STATEMENT BY REPRESENTATIVE FINNELL

I voted "present not voting" on Merritt amendment No. 103 as my family partnership may operate such wells in the future.

Finnell

Amendment No. 104

Representative Serna offered the following amendment to **CSHB 4**:

Floor Packet Page No. 274

Amend **CSHB 4** as follows:

(1) On page 232, between lines 12 and 13, insert the following:

(4) export documents showing a delivery point outside the United States certified by an employee of a local government that maintains toll booths on an international bridge and confirming that the property has been exported into a country other than the United States; and renumber accordingly.

(2) On page 232, line 23, strike "or".

(3) On page 232, line 24, after "(b)(4)" add "or (b)(5)".

Amendment No. 104 was adopted without objection.

Amendment No. 105

Representative Eiland offered the following amendment to **CSHB 4**:

Floor Packet Page No. 279

Amend **CSHB 4** by striking page 239, line 25, through page 241, line 20, and substituting:

(a) The following items are exempted from the taxes imposed by this chapter:

(1) tangible personal property that will become an ingredient or component part of tangible personal property manufactured, processed, or fabricated for ultimate sale;

(2) tangible personal property directly used or consumed in or during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale if the use or consumption of the property is necessary or essential to the manufacturing, processing, or fabrication operation and directly makes or causes a chemical or physical change to:

(A) the product being manufactured, processed, or fabricated for ultimate sale; or

(B) any intermediate or preliminary product that will become an ingredient or component part of the product being manufactured, processed, or fabricated for ultimate sale; [and]

(3) services performed directly on the product being manufactured prior to its distribution for sale and for the purpose of making the product more marketable; and

(4) actuators, steam production equipment and its fuel, in-process flow through tanks, cooling towers, generators, heat exchangers, electronic control room equipment, and computerized control units that are used to power, supply, support, or control equipment that qualifies for exemption under Subdivision (2) or to generate electricity, chilled water, or steam for ultimate sale.

(c) The exemption does not include:

(1) machinery, equipment, or replacement parts or their accessories having a useful life when new in excess of six months;

(2) intraplant transportation equipment, including intraplant transportation equipment used to move a product or raw material in connection with the manufacturing process and specifically including all piping and conveyor systems;

(3) maintenance or janitorial supplies or equipment [.] or other machinery, equipment, materials, or supplies that are used incidentally in a manufacturing, processing, or fabrication operation;

(4) [~~(3)~~] hand tools; [~~or~~]

(5) [~~(4)~~] office equipment or supplies, equipment or supplies used in sales or distribution activities, research or development of new products, or transportation activities, or other tangible personal property not used in an actual manufacturing, processing, or fabrication operation;

(6) ice exclusively used by commercial fishing boats in the storing of aquatic species including shrimp, other crustaceans, finfish, mollusks, and other similar creatures; or

(7) machinery and equipment or supplies used to maintain or store tangible personal property.

(r) A taxpayer claiming an exemption under this section has the burden of proof that the exemption is applicable and that no exclusion under Subsection (c) applies.

Amendment No. 106

Representative Greenberg offered the following amendment to Amendment No. 105:

Amend the Eiland amendment (at p. 279 of amendment book) to **CSHB 4** by adding the following items:

() On page 239 of **CSHB 4**, line 23 strike "and (s)" and substitute", (s), and (t)".

() On page 241 of **CSHB 4**, after line 27, insert:

(t) The following do not apply to the semiconductor fabrication clean rooms and equipment in Subsection (q) :

(1) limitations in Subsection (a) (2) that refer to tangible personal property directly causing chemical and physical changes to the product being manufactured, processed, or fabricated for ultimate sale;

(2) Subsection (c)(2); and

(3) Subsection (c)(7).

Amendment No. 106 was adopted without objection.

STATEMENT OF LEGISLATIVE INTENT

Prior Comptroller's Office policy:

Under long-standing comptroller's office policy, only equipment used directly in manufacturing, fabricating or processing goods for sale qualified for the "manufacturing exemption" from sales tax in Section 151.318 of the Tax Code.

Equipment used in the manufacturing process but used in a manner that is one or more steps removed from the actual manufacturing line did not qualify for the exemption under the comptroller's office policy. This ineligible equipment is commonly referred to as being "one step removed" from the manufacturing process.

While the comptroller's office followed this policy as a general rule, certain exceptions were made for equipment that was necessary and essential to the operation of the manufacturing line equipment. For example, the comptroller's office granted the exemption to certain equipment that fueled or controlled the manufacturing line equipment.

The Tyler Pipe and Chevron cases:

In 1996, the Austin Court of Appeals decided two important cases involving the sales tax exemption for manufacturing equipment.

In the Tyler Pipe case, the court decided that the comptroller's office policy was unduly narrow, and expanded the exemption to include any equipment used in the manufacturing process, one step removed or even further removed. The court hinted at further expanding the exemption to include all equipment in a manufacturing or processing plant.

In the Chevron Chemical case, the court decided that piping in a chemical plant qualified for the exemption as manufacturing equipment instead of being excluded from the exemption as intraplant transportation equipment.

Purpose of the amendment:

The committee bill is designed to reverse the Tyler Pipe and Chevron Chemical decisions and narrow the scope of the manufacturing exemption consistent with the prior policy of the comptroller's office.

This amendment ensures that, while reversing Tyler Pipe and Chevron Chemical, the bill does not go significantly further in eliminating the manufacturing exemption for equipment that was considered exempt by the comptroller's office before those court decisions.

The amendment accomplishes this purpose by specifically providing that certain types of equipment necessary and essential to the manufacturing process will continue to qualify for the exemption.

Questions regarding specific types of equipment:

Q: Will boilers and waste heat boilers — including economizers, superheaters, waterwalls, hoppers, feedwater heaters, condensers, pumps, air preheaters, draft fans, pulverizers, oil burning equipment and gas burning equipment that together form a part of the boilers — be exempt under this amendment as "steam production equipment"?

A: Yes, they would qualify under subsection (a)(4).

Q: Will inert gas generators be exempt?

A: Yes, under subsection (a)(4).

Q: Will refrigeration units be exempt?

A: Yes, if they are used directly in the production process to make a change in the product, under (a)(2). They are not exempt under (c)(7) if used to maintain or store the product.

Q: Will catalysts and regeneration units, ion exchange units, solvent recovery units, and isomerization units be exempt?

A: Yes, if they cause a change to the product, an intermediate product, or an ingredient, under (a)(2)(A) or (a)(2)(B).

Q: Does "steam production equipment" in (a)(4) include water purification equipment such as demineralizers and reverse osmosis units?

A: Yes.

Q: Will computer control equipment, including computers, regulators and recorders be exempt?

A: Yes, under subsection (a)(4), if they control equipment that changes the product or equipment that makes electricity, chilled water or steam.

Q: Does the piping exclusion reference in (c)(2) affect the exemption granted in subsection (q) for clean room piping?

A: No.

MOTION TO PRINT

Representative Junell moved to have placed in the journal a statement submitted by Representative Eiland establishing legislative intent for **HB 4**.

The motion prevailed without objection.

Amendment No. 105, as amended, was adopted without objection.

Amendment No. 107

On behalf of Representatives Siebert and Van de Putte, Representative Stiles offered the following amendment to **CSHB 4**:

Floor Packet Page No. 282

Amend **CSHB 4**, Section 4.36, as follows:

Strike new subsection 151.346(c)(2) of the Tax Code.

Amendment No. 108

Representative Siebert offered an amendment to Amendment No. 107.

Amendment No. 108 was withdrawn.

Amendment No. 107 was adopted without objection.

Amendment No. 109

Representative Stiles offered the following amendment to **CSHB 4**:

Floor Packet Page No. 288

Amend **CSHB 4** as follows:

(1) On page 248, line 17, through page 254, line 10, strike Section 4.41 of the bill and substitute a new Section 4.41 to read as follows:

SECTION 4.41. Subchapter C, Chapter 321, Tax Code, is amended by adding Sections 321.211 and 321.2111 to read as follows:

Sec. 321.211. USE OF EXPANDED TAX BASE REVENUE: GENERAL PURPOSE TAX. (a) Except as otherwise provided by this section, a municipality that has adopted the tax authorized by Section 321.101(a) shall use revenue from the expanded tax base to reduce municipal property taxes.

(b) The governing body of a municipality that has adopted the tax authorized by Section 321.101(a) may call and hold an election on November 4, 1997, on the question of using revenue from the expanded tax base collected under that provision for a purpose other than or in addition to reducing municipal property taxes.

(c) The order calling the election under this section must allow the voters of the municipality to vote on whether the expanded tax base revenue is required to be used to:

(1) reduce municipal property taxes;

(2) provide additional revenue for the municipality that can be used for any general purpose of the municipality in accordance with Section 321.506;

(3) provide funding for one or more specific projects or types of projects; or

(4) provide funding for a combination of the purposes described by this subsection.

(d) The ballot at the election held under this section shall be printed to permit voting in separate propositions on the purposes described by Subsection (c). If the governing body authorizes a vote on using the revenue for a combination of purposes, the ballot at the election must specify an amount or percentage of the amount of revenue that shall be used for each purpose. Regardless of the number of propositions on the ballot, a voter may be allowed to vote in favor of only one proposition. A voter may not be allowed to vote against any proposition.

(e) If the municipality holds an election under this section, the municipality may use the revenue from the expanded tax base only for the purpose or combination of purposes expressed in the proposition that receives a majority of the votes cast in the election. If no proposition receives a majority of the votes cast in the election, the governing body shall call another election to vote on the two propositions that received the highest and second-highest number of votes in the election or that tie for the highest number of votes. If more than two propositions tie for the highest number of votes in the election or two or more propositions tie for the second-highest number of votes, the governing body shall draw lots to determine which two propositions are to be voted on in the subsequent election.

(f) Not later than the fifth day after the date the final canvass of the original election is completed, the governing body shall order the subsequent election under Subsection (e). The subsequent election shall be held not earlier than the 20th or later than the 30th day after the date the final canvass of the

original election is completed. A subsequent election, however, may be held after the 30th but not later than the 45th day after the date the final canvass of the original election is completed if the later date is necessary to:

(1) permit a joint election to be held with another political subdivision in accordance with Chapter 271, Election Code; or

(2) avoid holding the election on:

(A) a legal state or national holiday; or

(B) a weekend day within three days of a legal state or national holiday.

(g) If the municipality holds a subsequent election, the municipality may use the revenue from the expanded tax base only for the purpose or combination of purposes expressed in the proposition that receives a majority of the votes cast in the subsequent election.

(h) If a municipality holds an election under this section and, before the date the use of the revenue from the expanded tax base is finally determined by the election, a municipality receives a distribution of the municipality's share of taxes under this chapter that includes revenue from the expanded tax base, the municipality shall deposit the expanded tax base revenue in a special account and may not use that money for any purpose until the approved use is finally determined.

Sec. 321.2111. USE OF EXPANDED TAX BASE REVENUE: TAX LEVIED FOR BENEFIT OF ANOTHER ENTITY. (a) This section applies to a municipality in which a sales and use tax has been adopted at an election held before September 1, 1997, and the municipality levies the tax for the benefit of another entity such as an industrial development corporation.

(b) Except as otherwise provided by this section, a municipality to which this section applies shall use revenue from the expanded tax base to reduce municipal property taxes.

(c) The governing body of a municipality to which this section applies may call and hold an election on November 4, 1997, on the question of using revenue from the expanded tax base collected under the law authorizing the imposition of the tax for a purpose other than or in addition to reducing municipal property taxes.

(d) The order calling the election under this section must allow the voters of the municipality to vote on whether the expanded tax base revenue is required to be used to:

(1) reduce municipal property taxes;

(2) provide additional revenue that can be used for any general purpose of the entity;

(3) provide funding for one or more specific projects or types of projects that the entity is otherwise authorized to undertake;

(4) rebate revenue to the municipality to provide additional revenue for the municipality that can be used for one or more specific projects or types of projects;

(5) rebate revenue to the municipality to provide additional revenue for the municipality that can be used for any general purpose of the municipality in accordance with Section 321.506; or

(6) provide funding for a combination of the purposes described by this subsection.

(e) The ballot at the election held under this section shall be printed to permit voting in separate propositions on the purposes described by Subsection (d). If the governing body authorizes a vote on using the revenue for a combination of purposes, the ballot at the election must specify an amount or percentage of an amount of revenue that shall be used for each purpose. Regardless of the number of propositions on the ballot, a voter may be allowed to vote in favor of only one proposition. A voter may not be allowed to vote against any proposition.

(f) If the municipality holds an election under this section, the entity or municipality, as appropriate, may use the revenue from the expanded tax base only for the purpose or combination of purposes expressed in the proposition that receives a majority of the votes cast in the election. If no proposition receives a majority of the votes cast in the election, the governing body of the municipality shall call another election to vote on the two propositions that received the highest and second-highest number of votes in the election or that tie for the highest number of votes. If more than two propositions tie for the highest number of votes in the main election or two or more propositions tie for the second-highest number of votes, the governing body shall draw lots to determine which propositions are to be voted on in the subsequent election.

(g) Not later than the fifth day after the date the final canvass of the original election is completed, the governing body shall order the subsequent election under Subsection (f). The subsequent election shall be held not earlier than the 20th or later than the 30th day after the date the final canvass of the original election is completed. A subsequent election, however, may be held after the 30th but not later than the 45th day after the date the final canvass of the original election is completed if the later date is necessary to:

(1) permit a joint election to be held with another political subdivision in accordance with Chapter 271, Election Code; or

(2) avoid holding the election on:

(A) a legal state or national holiday; or

(B) a weekend day within three days of a legal state or national holiday.

(h) If the municipality holds a subsequent election, the entity or municipality, as appropriate, may use the revenue from the expanded tax base only for the purpose or combination of purposes expressed in the proposition that receives a favorable vote of a majority of the votes cast in the subsequent election.

(i) If a municipality holds an election under this section and, before the date the use of the revenue from the expanded tax base is finally determined by the election, a municipality receives a distribution of the entity's share of taxes under this chapter that includes revenue from the expanded tax base, the municipality shall deposit the expanded tax base revenue in a special account and the entity or municipality may not use that money for any purpose until the approved use is finally determined.

(2) On page 258, lines 7-27, strike Section 4.43 of the bill and substitute a new Section 4.43 to read as follows:

SECTION 4.43. Subchapter F, Chapter 321, Tax Code, is amended by adding Section 321.508 to read as follows:

Sec. 321.508. USE OF TAX REVENUE FROM EXPANDED TAX BASE.

(a) Except as otherwise provided by this section, a municipality that imposes a tax under this chapter or an entity for whom the municipality levies a sales and use tax may use revenue from the expanded tax base only to reduce municipal property taxes.

(b) If the municipality holds an election under this chapter on the question of how to use the expanded tax base revenue, the municipality may use the revenue only for the purpose or purposes authorized by the voters under the applicable provisions of this chapter.

(c) If all or part of the expanded tax base revenue is to be used to reduce municipal property taxes, and the municipality also imposes the additional sales and use tax under Section 321.101(b), the expanded tax base revenue is treated as revenue from the additional sales and use tax and Section 321.507 and the applicable provisions of Title 1 apply.

(d) If all or part of the expanded tax base revenue is to be used to reduce municipal property taxes, and the municipality does not impose the additional sales and use tax under Section 321.101(b), the municipality is considered to have voted to adopt the additional sales and use tax and Section 321.507 and the applicable provisions of Title 1 apply to the expanded tax base revenue.

(3) On page 263, line 4, through page 269, line 11, strike Sections 4.46 and 4.47 of the bill and substitute new Sections 4.46 and 4.47 to read as follows:

SECTION 4.46. Subchapter C, Chapter 323, Tax Code, is amended by adding Sections 323.210 and 323.2101 to read as follows:

Sec. 323.210. USE OF EXPANDED TAX BASE REVENUE; GENERAL COUNTY TAX. (a) This section applies to a county that has adopted the county sales and use tax authorized by this chapter at an election held before September 1, 1997.

(b) The commissioners court of a county to which this section applies may call and hold an election on November 4, 1997, on the question of using revenue from the expanded tax base collected under this chapter for a purpose in addition to or other than reducing county property taxes.

(c) The order calling the election under this section shall allow the voters of the county to vote on whether the expanded tax base revenue is required to be used to:

(1) provide further reduction of county property taxes;

(2) provide additional revenue for the county that can be used for any general purpose of the county;

(3) provide funding for one or more specific projects or types of projects; or

(4) provide funding for a combination of the purposes described by this subsection.

(d) The ballot at the election held under this section shall be printed to permit voting in separate propositions on the purposes described by Subsection (c). If the commissioners court authorizes a vote on using the revenue for a combination of purposes, the ballot at the election must specify an amount or percentage of the amount of revenue that shall be used for each purpose. Regardless of the number of propositions on the ballot, a voter may be allowed

to vote in favor of only one proposition. A voter may not be allowed to vote against any proposition.

(e) If the county holds an election under this section, the county may use the revenue from the expanded tax base only for the purpose or combination of purposes expressed in the proposition that receives a majority of the votes cast in the election. If no proposition receives a majority of the votes cast in the election, the commissioners court shall call another election to vote on the two propositions that received the highest and second-highest number of votes in the election or that tie for the highest number of votes. If more than two propositions tie for the highest number of votes in the main election or two or more propositions tie for the second-highest number of votes, the commissioners court shall draw lots to determine which two propositions are to be voted on in the subsequent election.

(f) Not later than the fifth day after the date the final canvass of the original election is completed, the commissioners court shall order the subsequent election under Subsection (e). The subsequent election shall be held not earlier than the 20th or later than the 30th day after the date the final canvass of the original election is completed. A subsequent election, however, may be held after the 30th but not later than the 45th day after the date the final canvass of the original election is completed if the later date is necessary to:

(1) permit a joint election to be held with another political subdivision in accordance with Chapter 271, Election Code; or

(2) avoid holding the election on:

(A) a legal state or national holiday; or

(B) a weekend day within three days of a legal state or national holiday.

(g) If the county holds a subsequent election, the county may use the revenue from the expanded tax base only for the purpose or combination of purposes expressed in the proposition that receives a majority of the votes cast in the subsequent election.

(h) If the county holds an election under this section and, before the date the use of the revenue from the expanded tax base is finally determined by the election, a county receives a distribution of the county's share of taxes under this chapter that includes revenue from the expanded tax base, the county shall deposit the expanded tax base revenue in a special account and may not use that money for any purpose until the approved use is finally determined.

Sec. 323.2101. USE OF EXPANDED TAX BASE: TAX LEVIED FOR SPECIAL PURPOSE. (a) This section applies to a county in which a sales and use tax has been adopted at an election held before September 1, 1997, and the county may use the revenue from that tax only for a special purpose such as to provide funding for health services or for the operation of a county landfill and a criminal detention center.

(b) Except as otherwise provided by this section, a county to which this section applies shall use revenue from the expanded tax base to reduce county property taxes.

(c) The commissioners court of a county to which this section applies may call and hold an election on November 4, 1997, on the question of using revenue from the expanded tax base collected under the law authorizing the

imposition of the tax for a purpose other than or in addition to reducing county property taxes.

(d) The order calling the election under this section shall allow the voters of the county to vote on whether the expanded tax base revenue is required to be used to:

(1) reduce county property taxes;

(2) provide additional revenue that can be used for any special purpose for which the tax is imposed;

(3) provide funding for one or more specific projects or types of projects that the county is otherwise authorized to undertake under the law authorizing the imposition of the tax;

(4) provide funding that can be used for one or more specific projects or types of projects that the county is generally authorized to undertake;

(5) provide additional revenue for the county that can be used for any general purpose of the county; or

(6) provide funding for a combination of the purposes described by this subsection.

(e) The ballot at the election held under this section shall be printed to permit voting in separate propositions on the purposes described by Subsection (d). If the commissioners court authorizes a vote on using the revenue for a combination of purposes, the ballot at the election must specify an amount or percentage of an amount of revenue that shall be used for each purpose. Regardless of the number of propositions on the ballot, a voter may be allowed to vote in favor of only one proposition. A voter may not be allowed to vote against any proposition.

(f) If the county holds an election under this section, the county may use the revenue from the expanded tax base only for the purpose or combination of purposes expressed in the proposition that receives a majority of the votes cast in the election. If no proposition receives a majority of the votes cast in the election, the commissioners court shall call another election to vote on the two propositions that received the highest and second-highest number of votes in the election or that tie for the highest number of votes. If more than two propositions tie for the highest number of votes in the election or two or more propositions tie for the second-highest number of votes, the commissioners court shall draw lots to determine which two propositions are to be voted on in the subsequent election.

(g) Not later than the fifth day after the date the final canvass of the original election is completed, the commissioners court shall order the subsequent election under Subsection (f). The subsequent election shall be held not earlier than the 20th or later than the 30th day after the date the final canvass of the original election is completed. A subsequent election, however, may be held after the 30th but not later than the 45th day after the date the final canvass of the original election is completed if the later date is necessary to:

(1) permit a joint election to be held with another political subdivision in accordance with Chapter 271, Election Code; or

(2) avoid holding the election on:

(A) a legal state or national holiday; or

(B) a weekend day within three days of a legal state or national holiday.

(h) If the county holds a subsequent election under this section, the county may use the revenue from the expanded tax base only for the purpose or combination of purposes expressed in the proposition that receives a majority of the votes cast in the subsequent election.

(i) If a county holds an election under this section and, before the date the use of the revenue from the expanded tax base is finally determined under this section, a county receives a distribution of the county's share of taxes under this chapter that includes revenue from the expanded tax base, the county shall deposit the expanded tax base revenue in a special account and may not use that money for any purpose until the approved use is finally determined.

SECTION 4.47. Subchapter F, Chapter 323, Tax Code, is amended by adding Section 323.506 to read as follows:

Sec. 323.506. USE OF TAX REVENUE FROM EXPANDED TAX BASE.

(a) Except as otherwise provided by this section, a county that imposes a county sales and use tax under this chapter or under another chapter for a special purpose may use revenue from the expanded tax base only to reduce county property taxes.

(b) If a county holds an election under this chapter on the question of how to use the expanded tax base revenue, the county may use the revenue only for the purpose or purposes authorized by the voters under the applicable provisions of this chapter.

(c) If all or part of the additional revenue is to be used to reduce county property taxes, the county shall use the money as required by Section 323.505 and the applicable provisions of Title 1.

(d) If all or part of the additional revenue is to be used for a purpose other than to reduce county property taxes, that revenue is not considered to be sales and use tax revenue for the purposes of Title 1.

(4) On page 270, strike lines 4-27, on page 271, strike lines 1-27, on page 272, strike lines 1-27, and on page 273, strike lines 1-10 and substitute the following:

Sec. 326.021. APPLICATION OF SUBCHAPTER. This subchapter applies to a political subdivision that imposes an ad valorem tax and voted to impose a sales and use tax governed by Chapter 321 or 323 before September 1, 1997.

Sec. 326.022. USE OF EXPANDED TAX BASE. Except as otherwise provided by this subchapter, a political subdivision to which this subchapter applies shall use revenue from the expanded tax base to reduce the political subdivision's property taxes.

Sec. 326.023. ELECTION FOR USE OF EXPANDED TAX BASE. (a) The governing body of a political subdivision to which this subchapter applies may call and hold an election on November 4, 1997, on the question of using revenue from the expanded tax base collected under the law authorizing the imposition of the tax for a purpose other than or in addition to reducing property taxes.

(b) The order calling the election under this section must allow the voters of the political subdivision to vote on whether the expanded tax base revenue is required to be used to:

- (1) reduce property taxes of the political subdivision;
- (2) provide additional revenue for the political subdivision that can be used for any general purpose of the political subdivision;
- (3) provide funding for one or more specific projects or types of projects otherwise authorized for the political subdivision; or
- (4) provide funding for a combination of the purposes described by this subsection.

(c) The ballot at the election held under this section shall be printed to permit voting in separate propositions on the purposes described by this section. If the governing body authorizes a vote on using the revenue for a combination of purposes, the ballot at the election must specify an amount or percentage of the amount of revenue that shall be used for each purpose. Regardless of the number of propositions on the ballot, a voter may be allowed to vote in favor of only one proposition. A voter may not be allowed to vote against any proposition.

(d) If the political subdivision holds an election under this section, the political subdivision may use the revenue from the expanded tax base only for the purpose or combination of purposes expressed in the proposition that receives a majority of the votes cast in the election. If no proposition receives a majority of the votes cast in the election, the governing body shall call another election to vote on the two propositions that received the highest and second-highest number of votes in the election or that tie for the highest number of votes. If more than two propositions tie for the highest number of votes in the election or two or more propositions tie for the second-highest number of votes, the governing body shall draw lots to determine which two propositions are to be voted on in the subsequent election.

(e) Not later than the fifth day after the date the final canvass of the original election is completed, the governing body shall order the subsequent election under Subsection (d). The subsequent election shall be held not earlier than the 20th or later than the 30th day after the date the final canvass of the original election is completed. A subsequent election, however, may be held after the 30th but not later than the 45th day after the date the final canvass of the original election is completed if the later date is necessary to:

- (1) permit a joint election to be held with another political subdivision in accordance with Chapter 271, Election Code; or
- (2) avoid holding the election on:
 - (A) a legal state or national holiday; or
 - (B) a weekend day within three days of a legal state or national holiday.

(f) If the political subdivision holds a subsequent election, the political subdivision may use the revenue from the expanded tax base only for the purpose or combination of purposes expressed in the proposition that receives a majority of the votes cast in the subsequent election.

(g) If a political subdivision holds an election under this section and, before the date the use of the revenue from the expanded tax base is finally determined under this section, a political subdivision receives a distribution of the political subdivision's share of taxes under this chapter that includes revenue from the expanded tax base, the political subdivision shall deposit the expanded tax base

revenue in a special account and may not use that money for any purpose until the approved use is finally determined.

Sec. 326.024. USE OF TAX REVENUE. (a) Except as otherwise provided by this section, a political subdivision to which this subchapter applies may use the revenue from the expanded tax base only to reduce the political subdivision's property taxes.

(b) If the political subdivision holds an election under this subchapter on the question of how to use the expanded tax base revenue, the political subdivision may use the revenue only for the purpose or purposes authorized by the voters.

(c) If all or part of the additional revenue is to be used to reduce property taxes, the political subdivision is considered to have voted to impose the municipal additional sales and use tax or the county sales and use tax and Section 321.507 or 323.505, as appropriate, applies. Regardless, the applicable provisions of Title 1 apply.

[Sections 326.025-326.050 reserved for expansion]

Amendment No. 110

Representative Stiles offered the following amendment to Amendment No. 109:

Amend Amendment No. 109 by Stiles to **CSHB 4** as follows:

- (1) On page 14, strike lines 4-7.
- (2) On page 14, line 8, strike "(b)" and substitute "(a)".
- (3) On page 14, line 12, strike "(c)" and substitute "(b)".
- (4) On page 14, line 16, strike "(d)" and substitute "(c)".

Amendment No. 110 was adopted without objection.

Amendment No. 111

Representative Counts offered the following amendment to Amendment No. 109:

Amend the Stiles Amendment to **CSHB 4** (page 288 of the amendment book) as follows:

(1) On page 3, after line 27, add the following appropriately lettered Subsection:

"() A municipality is not required to call and hold an election under this section if the annual revenue from the expanded tax base does not exceed \$50,000. If the governing body elects not to hold the election, the revenue from the expanded tax base shall be used to provide for the reduction of municipal property taxes, additional revenue for the municipality that can be used for any general purpose of the municipality, funding for one or more specific projects or types of projects; or a combination of these purposes as determined by the governing body. If the governing body elects to hold the election, the election shall be conducted in the manner required by this section."

(2) On page 7, between lines 4 and 5, add the following appropriately lettered Subsection:

() A municipality is not required to call and hold an election under this section if the annual revenue from the expanded tax base does not exceed

\$50,000. If the governing body elects not to hold the election, the revenue from the expanded tax base shall be used to provide for the reduction of municipal property taxes, additional revenue for the municipality that can be used for any general purpose of the municipality, funding for one or more specific projects or types of projects; or a combination of these purposes as determined by the governing body. If the governing body elects to hold the election, the election shall be conducted in the manner required by this section."

(3) On page 10, between lines 25 and 26, add the following appropriately lettered Subsection:

() A county is not required to call and hold an election under this section if the annual revenue from the expanded tax base does not exceed \$50,000. If the commissioners court elects not to hold the election, the revenue from the expanded tax base shall be used to provide for the reduction of county property taxes, additional revenue for the county that can be used for any general purpose of the county, funding for one or more specific projects or types of projects; or a combination of these purposes as determined by the commissioners court. If the commissioners court elects to hold the election, the election shall be conducted in the manner required by this section."

(4) On page 13, after line 27, add the following appropriately lettered Subsection:

() A county is not required to call and hold an election under this section if the annual revenue from the expanded tax base does not exceed \$50,000. If the commissioners court elects not to hold the election, the revenue from the expanded tax base shall be used to provide for the reduction of county property taxes, additional revenue for the county that can be used for any general purpose of the county, funding for one or more specific projects or types of projects; or a combination of these purposes as determined by the commissioners court. If the commissioners court elects to hold the election, the election shall be conducted in the manner required by this section."

Amendment No. 111 was adopted without objection.

Amendment No. 112

Representative Staples offered the following amendment to Amendment No. 109:

Amend the Stiles Amendment to **CSHB 4** (page 288, amendment book), as follows:

(1) On page 2, lines 23 and 24, strike "governing body shall draw lots to determine" and substitute "governing body by majority vote shall determine".

(2) On page 6, line 1, strike "governing body shall draw lots to determine" and substitute "governing body by majority vote shall determine".

(3) On page 9, lines 22 and 23, strike "commissioners court shall draw lots to determine" and substitute "commissioners court by majority vote shall determine".

(4) On page 12, lines 23 and 24, strike "commissioners court shall draw lots to determine" and substitute "commissioners court by majority vote shall determine".

(5) On page 16, line 16, strike "governing body shall draw lots to determine" and substitute "governing body by majority vote shall determine".

Amendment No. 112 was adopted without objection.

Amendment No. 113

Representative Grusendorf offered the following amendment to Amendment No. 109:

Amend the Stiles Amendment to **CSHB 4** (page 288 of the amendment book) as follows:

(1) On page 3, after line 27, insert the following:

(i) Notwithstanding any other provision of this section or Section 321.508, if fewer than 25 percent of the registered voters of the municipality vote at the initial election, the municipality may not call a subsequent election and the municipality shall use the expanded tax base revenue to reduce municipal property taxes as if the voters had approved a proposition for that purpose. If the municipality holds a subsequent election and fewer than 25 percent of the registered voters of the municipality vote at that election, the election is void and the municipality shall use the expanded tax base revenue to reduce municipal property taxes.

(2) On page 7, between lines 4 and 5, insert the following:

(j) Notwithstanding any other provision of this section or Section 321.508, if fewer than 25 percent of the registered voters of the municipality vote at the initial election, the municipality may not call a subsequent election and the municipality shall use the expanded tax base revenue to reduce municipal property taxes as if the voters had approved a proposition for that purpose. If the municipality holds a subsequent election and fewer than 25 percent of the registered voters of the municipality vote at that election, the election is void and the municipality shall use the expanded tax base revenue to reduce municipal property taxes.

(3) On page 10, between lines 25 and 26, insert the following:

(i) Notwithstanding any other provision of this section or Section 323.506, if fewer than 25 percent of the registered voters of the county vote at the initial election, the county may not call a subsequent election and the county shall use the expanded tax base revenue to reduce county property taxes as if the voters had approved a proposition for that purpose. If the county holds a subsequent election and fewer than 25 percent of the registered voters of the county vote at that election, the election is void and the county shall use the expanded tax base revenue to reduce county property taxes.

(4) On page 13, after line 27, insert the following:

(j) Notwithstanding any other provision of this section or Section 323.506, if fewer than 25 percent of the registered voters of the county vote at the initial election, the county may not call a subsequent election and the county shall use the expanded tax base revenue to reduce county property taxes as if the voters had approved a proposition for that purpose. If the county holds a subsequent election and fewer than 25 percent of the registered voters of the county vote at that election, the election is void and the county shall use the expanded tax base revenue to reduce county property taxes.

(5) On page 17, between lines 21 and 22, insert the following:

(h) Notwithstanding any other provision of this subchapter, if fewer than 25 percent of the registered voters of the political subdivision vote at the initial election, the political subdivision may not call a subsequent election and the political subdivision shall use the expanded tax base revenue to reduce the

political subdivision's property taxes as if the voters had approved a proposition for that purpose. If the political subdivision holds a subsequent election and fewer than 25 percent of the registered voters of the political subdivision vote at that election, the election is void and the political subdivision shall use the expanded tax base revenue to reduce the political subdivision's property taxes.

(6) Add a new item to the amendment to read as follows:

() On page 254, line 11, through page 258, line 6, strike SECTION 4.42 of the bill.

(Speaker pro tempore in the chair)

Representative Stiles moved to table Amendment No. 113.

A record vote was requested.

The motion to table prevailed by (Record 237): 86 Yeas, 54 Nays, 2 Present, not voting.

Yeas — Alexander; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Burnam; Chavez; Chisum; Clark; Coleman; Cook; Counts; Cuellar; Danburg; Davila; Davis; Delisi; Dunnam; Ehrhardt; Eiland; Farrar; Flores; Gallego; Garcia; Giddings; Glaze; Gray; Greenberg; Gutierrez; Hawley; Hernandez; Hightower; Hilbert; Hilderbran; Hinojosa; Hirschi; Hochberg; Hodge; Janek; Jones, D.; Jones, J.; Junell; Keel; King; Krusee; Lewis, G.; Lewis, R.; Longoria; Luna; Maxey; McCall; McClendon; McReynolds; Moreno; Naishtat; Oakley; Oliveira; Olivo; Patterson; Pickett; Pitts; Place; Price; Ramsay; Rangel; Raymond; Reyna, A.; Rhodes; Sadler; Serna; Smithee; Solis; Stiles; Swinford; Telford; Thompson; Torres; Turner, B.; Walker; Williamson; Wise; Wolens; Yarbrough; Zbranek.

Nays — Allen; Brimer; Christian; Corte; Crabb; Craddick; Culberson; Denny; Driver; Elkins; Finnell; Galloway; Goodman; Goolsby; Grusendorf; Haggerty; Hamric; Hartnett; Heflin; Hill; Holzheuser; Horn; Howard; Hunter; Hupp; Jackson; Kamel; Keffer; Kubiak; Kuempel; Madden; Marchant; Merritt; Moffat; Mowery; Nixon; Palmer; Rabuck; Reyna, E.; Roman; Seaman; Shields; Siebert; Smith; Solomons; Staples; Talton; Tillery; Turner, S.; Van de Putte; West; Williams; Wohlgemuth; Woolley.

Present, not voting — Mr. Speaker; Uher(C).

Absent, Excused — Dukes; Dutton.

Absent — Carter; Edwards; Isett; Puente; Wilson.

STATEMENT OF VOTE

When Record No. 237 was taken, I was in the house but away from my desk. I would have voted yes.

Carter

Amendment No. 109, as amended, was adopted without objection.

Amendment No. 114

Representative Elkins offered the following amendment to CSHB 4:

Floor Packet Page No. 313

Amend **CSHB 4** as follows:

(1) On page 254, line 11, through page 258, line 6, strike SECTION 4.42 of the bill.

(2) Renumber subsequent Sections of Article 4 appropriately.

Representative Wilson moved to table Amendment No. 114.

The motion to table prevailed.

Amendment No. 115

Representatives Giddings, Goolsby, Ehrhardt, Garcia, Tillery, Hodge, and Cuellar offered an amendment (Floor Packet Page No. 314) to **CSHB 4**.

Amendment No. 115 was withdrawn.

Amendment No. 116

Representative Giddings offered the following amendment to **CSHB 4**:

Floor Packet Page No. 315

Amend **CSHB 4** on page 254, line 16, by striking "1.5 million" and substituting "1,000,000".

Amendment No. 116 was adopted without objection.

Amendment No. 117

Representative Tillery offered the following amendment to **CSHB 4**:

Floor Packet Page No. 317

Amend **CSHB 4** on page 259, line 10, by striking "down".

Amendment No. 117 was adopted without objection.

Amendment No. 118

Representative Madden offered the following amendment to **CSHB 4**:

Floor Packet Page No. 318

Amend **CSHB 4** by deleting in Section 4.44. Subsection 322.404.(e), constituting lines 9 and 10 on page 262.

(Speaker in chair)

Amendment No. 118 was adopted without objection.

Amendment No. 119

Representative Solomons offered the following amendment to **CSHB 4**:

Floor Packet Page No. 284

Amend **CSHB 4** by adding new sections to the bill, appropriately numbered, to read as follows, and renumbering subsequent sections of the bill appropriately:

SECTION _____. Sections 152.023 (a) and (b), Tax Code, are amended to read as follows:

(a) A use tax is imposed on a new resident of this state who brings into this state a motor vehicle that has been registered previously in the new resident's name in another ~~[any other]~~ state or a foreign country.

(b) The tax is \$30 ~~[\$15]~~ for each vehicle.

SECTION _____. Section 152.121, Tax Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) Of the amount of the tax collected on a motor vehicle under Section 152.023, the county tax assessor-collector shall:

(1) deposit \$15 in the county treasury; and

(2) send \$15 to the comptroller.

(e) Money deposited in a county treasury under Subsection (d)(1) may be used only for county road and bridge purposes. Money received by the comptroller under Subsection (d)(2) shall be deposited to the credit of the state highway fund.

Amendment No. 120

Representative Hochberg offered the following amendment to Amendment No. 119:

Amend the Solomons amendment to **CSHB 4** (page 284 of the amendment book) by striking new Section 152.121(e), Tax Code, as added by the amendment, and substituting:

(e) Money deposited in a county treasury under Subsection (d)(1) may be used only for county road and bridge purposes. In a county having a population of 2.5 million or more, the money for county road and bridge purposes shall be spent in the unincorporated areas of the county and in the incorporated areas of the county in proportion to the population of those areas. Money received by the comptroller under Subsection (d)(2) shall be deposited to the credit of the general revenue fund.

Amendment No. 120 was adopted without objection.

Amendment No. 119 was withdrawn.

Amendment No. 121

Representative Brimer offered the following amendment to **CSHB 4**:

Floor Packet Page No. 326

Amend **CSHB 4** as follows:

On page 286, line 14, SECTION 5.14 of the bill delete "two percent (2.0%)" and substitute "1.8 percent (1.8%)".

Amendment No. 122

Representative Clark offered the following amendment to Amendment No. 121:

Amend the Brimer amendment (p. 326, amendment book) to **CSHB 4** by adding the following appropriately numbered item to the amendment:

() Add an appropriately numbered article to the bill to read as follows:

ARTICLE _____. GROSS RECEIPTS TAX ON SEXUALLY
ORIENTED BUSINESSES

SECTION _____.01. Chapter 182, Tax Code, is amended by adding Subchapter A to read as follows:

Sec. 182.001. DEFINITION. In this subchapter, "sexually oriented business" has the meaning assigned that term by Section 243.002, Local Government Code.

Sec. 182.002. EXEMPTION. A business that is exempt under Chapter 243, Local Government Code, from regulation under that chapter is exempt from the tax imposed under this subchapter.

Sec. 182.003. IMPOSITION AND RATE OF TAX. (a) An occupation tax is imposed on every sexually oriented business that does business in this state.

(b) The tax rate is 10 percent of the gross receipts of the sexually oriented business from business done in this state.

SECTION _____.02. This article takes effect on the effective date of this Act.

Representative Nixon moved to table Amendment No. 122.

A record vote was requested.

The motion to table was lost by (Record 238): 6 Yeas, 133 Nays, 2 Present, not voting.

Yeas — Crabb; Farrar; Heflin; Hupp; Thompson; Williams.

Nays — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Burnam; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Craddick; Cuellar; Culberson; Davila; Davis; Delisi; Denny; Driver; Dunnam; Edwards; Ehrhardt; Eiland; Elkins; Finnell; Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Goodman; Goolsby; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Hodge; Holzheuser; Horn; Howard; Hunter; Isett; Jackson; Janek; Jones, D.; Jones, J.; Junell; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McClendon; McReynolds; Merritt; Moffat; Moreno; Mowery; Naishtat; Oakley; Oliveira; Olivo; Patterson; Pickett; Pitts; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna, E.; Rhodes; Roman; Sadler; Seaman; Serna; Shields; Siebert; Smith; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbrank.

Present, not voting — Mr. Speaker(C); Reyna, A.

Absent, Excused — Dukes; Dutton.

Absent — Danburg; Gray; Hinojosa; Nixon; Palmer; Place.

STATEMENT OF VOTE

When Record No. 238 was taken, I was in the house but away from my desk. I would have voted no.

Place

Amendment No. 123

Representative Nixon offered the following substitute amendment for Amendment No. 122:

Substitute the following for the Clark amendment to the Brimer amendment to **CSHB 4**:

Amend the Brimer amendment to **CSHB 4** by adding the following appropriately numbered item to the amendment:

() Add an appropriately numbered article to the bill to read as follows:

ARTICLE _____. GROSS RECEIPTS TAX ON
SEXUALLY ORIENTED BUSINESSES

SECTION __.01. Chapter 182, Tax Code, is amended by adding Subchapter A to read as follows:

Sec. 182.001. DEFINITION. In this subchapter, "sexually oriented business" has the meaning assigned that term by Section 243.002, Local Government Code.

Sec. 182.002. EXEMPTION. A business that is exempt under Chapter 243, Local Government Code, from regulation under that chapter is exempt from the tax imposed under this subchapter.

Sec. 182.003. IMPOSITION AND RATE OF TAX. (a) An occupation tax is imposed on every sexually oriented business that does business in this state.

(b) The tax rate is 100 percent of the gross receipts of the sexually oriented business from business done in this state.

SECTION __.02. This article takes effect on the effective date of this Act.

Representative Clark moved to table Amendment No. 123.

The motion to table was withdrawn.

Amendment No. 123 was withdrawn.

Representative Clark moved to have the following text printed in the journal.

The motion prevailed without objection.

**SUMMARY OF STUDIES DOCUMENTING SECONDARY EFFECTS
OF SEXUALLY ORIENTED BUSINESSES**

These summaries are edited from research provided by the staff of the National Law Center for Children and Families. Original copies of each study are available from the National Law Center or National Family Legal Foundation.

PHOENIX, ARIZONA

May 25, 1979

The study examined crime statistics for 1978, comparing areas which have sexually oriented businesses with those that do not.

The results show a marked increase in sex offenses in neighborhoods with sexually oriented businesses, and increases in property and violent crimes as well.

Three study areas (near locations of sexually oriented businesses) and three control areas (with no sexually oriented businesses) were selected. The study and control areas were paired according to the number of residents, median family income, percentage of non-white population, median age of population, percentage of dwelling units built since 1950, and percentage of acreage used for residential and non-residential purposes.

Three categories of criminal activity were included in the study: property crimes (burglary, larceny, auto theft), violent crimes (rape, murder, robbery, assault), and sex crimes (rape, indecent exposure, lewd and lascivious behavior, child molestation).

On average, the number of sex offenses was 506 percent greater in neighborhoods where sexually oriented businesses were located; in one of the neighborhoods the number was 1,000 percent above the corresponding control area. Of the sex offenses, indecent exposure was the most common offense and the largest contributor to the increase of crimes in areas where sexually oriented businesses were located. Even without considering the crime of indecent exposure the number of other crimes, such as rape, lewd and lascivious behavior, and child molestation, was 132 percent greater than in control areas without sexually oriented businesses.

On average, the number of property crimes was 43 percent greater in neighborhoods where sexually oriented businesses were located, and the number of violent crimes was 4 percent higher in those areas.

The Phoenix ordinance requires sexually oriented businesses to locate at least 1,000 feet from other sexually oriented businesses and 500 feet from schools or residential zones. Approval by the City Council and area residents can waive the 500 foot requirement.

A petition signed by 51 percent of the residents in the 500 foot radius who do not object must be filed and be verified by the Planning Director.

GARDEN GROVE, CALIFORNIA September 12, 1991

This report by independent consultants summarized statistics to determine whether adult businesses should be regulated because of their impact on crime, property values, and quality of life. Statistics were measured from 1981 to 1990, and included crime data and surveys with real estate professionals and city residents. Garden Grove Boulevard, which has seven adult businesses, was selected as the study area. The study incorporated many control factors to insure accurate results. The report included the brief legal history of adult business regulation and an extensive appendix with sample materials and a proposed statute.

Crime increased significantly with the opening of an adult business, or with the expansion of an existing business or the addition of a bar nearby. The rise was greatest in "serious" offenses (termed "Part I" crimes: homicide, rape, robbery, assault, burglary, theft and auto theft). On Garden Grove Boulevard, the adult businesses accounted for 36 percent of all crime in the area. In one case, a bar opened less than 500 feet from an adult business, and serious crime within 1,000 feet of that business rose more than 300 percent the next year.

Overwhelmingly, respondents said that an adult business within 200-500 feet of a residential and commercial property depreciates that property value. The greatest impact was on single family homes. The chief factor cited for the depreciation was the increased crime associated with adult businesses.

Phone calls were made in a random sample of households in the Garden Grove Boulevard vicinity. The public consensus was that adult businesses in that area were a serious problem. Nearly 25 percent of the surveyed individuals lived within 1,000 feet of an adult business. More than 21 percent cited specific

personal experiences of problems relating to these businesses, including crime, noise, litter, and general quality of life. Eighty percent said they would want to move if an adult business opened in their neighborhood, with 60 percent saying they "would move" or "probably would move." Eighty-five percent supported city regulation of the locations of adult businesses, with 78 percent strongly advocating the prohibition of adult businesses within 500 feet of a residential area, school, or church. Women commonly expressed fear for themselves and their children because of adult businesses.

The report concluded that adult businesses have a "real impact" on everyday life through harmful secondary effects and made four recommendations: (1) keep current requirement of 1,000 feet separation between adult businesses; (2) prohibit adult establishments within 1,000 feet of residential areas; (3) enact a system of conditional use permits for adult businesses with police department involvement in every aspect of the process; and (4) prohibit bars or taverns within 1,000 feet of an adult business.

LOS ANGELES, CALIFORNIA

June, 1977

The Department of City Planning studied the effects of the concentration of sexually oriented businesses on surrounding properties for the years 1969-75 (a time of proliferation for such businesses). The report focuses on five areas with the greatest concentration of these businesses (compared to five "control" areas free of them), and cites data from property assessments/sales, public meeting testimony, and responses from two questionnaires (one to business/residential owners within a 500 foot radius of the five study areas and a second to realtors/real estate appraisers and lenders). Crime statistics in the study areas were compared to the city as a whole. Also included: a chart of sexually oriented business regulations in 11 major cities, details of current regulations available under state/municipal law, and appendices with samples of questionnaires, letters, and other study materials.

While empirical data for 1969-75 did not conclusively show the relation of property valuations to the concentration of sexually oriented businesses, more than 90 percent of realtors, real estate appraisers and lenders responding to the city questionnaires said that a grouping of such businesses within 500-1,000 feet of residential property decreases the market value of the homes. Also residents and business people at two public meetings spoke overwhelmingly against the presence of sexually oriented businesses, citing fear, concern for children, loss of customers and difficulty in hiring employees at non-adult businesses, and the necessity for churches to provide guards for their parking lots.

More crime occurred where sexually oriented businesses were concentrated. Compared to city-wide statistics for 1969-75, areas with several such businesses experienced greater increases in pandering (340 percent), murder (42.3 percent), aggravated assault (45.2 percent), robbery (52.6 percent), and purse snatching (17 percent). Street robberies, where the criminal has face-to-face contact with his victim, increased almost 70 percent more in the study areas. A second category of crime, including other assaults, forgery, fraud, counterfeiting, embezzlement, stolen property, prostitution, narcotics, liquor laws, and gambling increased 42 percent more in the study areas over the city as a whole.

The study recommended distances of 1,000 feet between separate sexually oriented businesses, and a minimum of 500 feet separation of such businesses from schools, parks, churches, and residential areas.

WHITTIER, CALIFORNIA

January 9, 1978

After experiencing a rapid growth of sexually oriented businesses since 1969, the Whittier City Council commissioned a study of the effects of the businesses on the adjacent residential and commercial areas. At the time of the study, Whittier had 13 "adult" businesses: six model studios, four massage parlors, two bookstores, and one theater. Utilizing statistics, testimonies, and agency reports, the study compared two residential areas and four business areas over a span of 10 years (1968-1977). One residential area was near the largest concentration of adult businesses, the other had no commercial frontage but was chosen because of similar street patterns, lot sizes, and number of homes. For businesses, Area 1 had six adult businesses, Area 2 had one, Area 3 had three, and Area 4 had none. Two chief concerns cited in the report are residential and business occupancy turnovers and increased crime.

After 1973, 57 percent of the homes in the adult business area had changes of occupancy, compared to only 19 percent for the non-adult business area. Residents complained of "excessive noise, pornographic material left laying about, and sexual offenders (such as exhibitionists) venting their frustrations in the adjoining neighborhood." Citizens also expressed concern about drunk drivers coming into the area. Business Area 1, with the most concentration of adult businesses (six), experienced a 134 percent increase in annual turnover rate. Area 3, with three adult businesses at one location, showed a 107 percent turnover rate. Area 2 (with one adult business) had no measurable change and Area 4 (with no commercial or adult businesses) experienced a 45 percent decrease in turnover from similar periods.

The City Council looked at crime statistics for the two residential areas for the time periods of 1970-73 (before adult businesses) and 1974-77 (after adult businesses). In the adult business area, criminal activity increased 102 percent (the entire city had only an 8.3 percent increase). Certain crimes skyrocketed (malicious mischief up 700 percent; all assaults up 387 percent; prostitution up 300 percent). All types of theft (petty, grand, and auto) increased more than 120 percent each. Ten types of crime were reported for the first time ever in the 1974-77 period.

The Council's report recommended a dispersal-type ordinance that prohibits adult businesses closer than 500 feet to residential areas, churches and schools, and 1,000 feet from each other. In addition, the study proposed a 1,000 foot separation from parks because of their use by citizens after normal working hours. Adult businesses would be given an 18-36 month amortization period (if the change involved only stock in trade, a 90-day period was recommended).

INDIANAPOLIS, INDIANA

February, 1984

After a 10-year growth in the number of sexually oriented businesses (to a total of 68 on 43 sites) and numerous citizen complaints of decreasing property values and rising crime, the city compared six sexually oriented

business "study" areas and six "control" locations with each other and with the city as a whole. The study and control areas had high population, low income, and older residents. In order to develop a "best professional opinion," the city collaborated with Indiana University on a national survey of real estate appraisers to determine valuation effects of sexually oriented businesses on adjacent properties.

From 1978-82, crime increases in the study areas were 23 percent higher than the control areas (46 percent higher than the city as a whole). Sex-related crimes in the study areas increased more than 20 percent over the control areas. Residential locations in the study areas had a 56 percent greater crime increase than commercial study areas. Sex-related crimes were four times more common in residential study areas than commercial study areas with sexually oriented businesses.

Homes in the study areas appreciated at only half the rate of homes in the control areas, and one-third the rate of the city. "Pressures within the study areas" caused a slight increase in real estate listings, while the city as a whole had a 50 percent decrease, denoting high occupancy turnover. Appraisers responding to the survey said one sexually oriented business within one block of residences and businesses decreased their value and half of the respondents said the immediate depreciation exceeded 10 percent. Appraisers also noted that value depreciation on residential areas near sexually oriented businesses is greater than on commercial locations. The report concluded: "The best professional judgment available indicates overwhelmingly that adult entertainment businesses—even a relatively passive use such as an adult bookstore—have a serious negative effect on their immediate environs."

The report recommended that sexually oriented businesses locate at least 500 feet from residential areas, schools, churches, or established historic areas.

MINNEAPOLIS, MINNESOTA

October, 1980

This report is divided into two sections: the relationship of bars and crime, and the impact of "adult businesses" on neighborhood deterioration. In the study, an "adult business" is one where alcohol is served (including restaurants) or a sexually oriented business (i.e., saunas, adult theaters and bookstores, rap parlors, arcades, and bars with sexually oriented entertainment). Census tracts were used as study areas and evaluated for housing values and crime rates. Housing values were determined by the 1970 census compared to 1979 assessments. Crime rates were compared for 1974-75 and 1979-80. The study is strictly empirical and reported in a formal and statistical manner.

The report concluded that concentrations of sexually oriented businesses have a significant relationship to higher crime and lower property values. Other than statistical charts no statements of actual crime reports or housing values are included in the report. Thus, the lay reader has only the most generalized statements of how the committee interpreted the empirical data.

The report recommended: (1) that adult businesses be at least one-tenth of a mile (about 500 feet) from residential areas; (2) that adult businesses should not be adjacent to each other or even a different type of late night business (i.e., 24-hour laundromat, movie theaters); (3) that adult businesses should be in large commercial zones in various parts of the city (to aid police patrol and help

separate adult businesses from residential neighborhoods). The report said "policies which foster or supplement attitudes and activities that strengthen the qualities of the neighborhoods are more likely to have desired impacts on crime and housing values than simple removal or restriction of adult businesses."

CLEVELAND, OHIO

August 24, 1977

This police department report is taken from information give by Captain Delau participating in a panel discussion at the National Conference on the Blight of Obscenity held in Cleveland July 28-29, 1977. The topic was "The Impact of Obscenity on the Total Community." Crime statistics are included for 1976 robberies and rapes. Areas evaluated were census tracts (204 in the whole city, 15 study tracts with sexually oriented businesses). At the time of the study, Cleveland had 26 pornography outlets (eight movie houses and 18 bookstores with "peep show" booths). Their location was not regulated by city zoning laws.

For 1976, study tracts had nearly double the number of robberies as the city as a whole (40.5 per study tract compared to 20.5 for other city tracts). In one study tract with five sexually oriented businesses and 730 people, there were 136 robberies. In the city's largest tract (13, 587 people, zero pornography outlets) there were only 14 robberies. Of the three tracts with the highest incidence of rape, two had sexually oriented businesses and the third bordered a tract with two such businesses. In these three, there were 41 rapes in 1976 (14 per tract), nearly seven times the city average of 2.4 rapes per census tract.

The report concluded that "close scrutiny of the figures from the Data Processing Unit on any and every phase of the degree of crime as recorded by census tracts indicates a much higher crime rate where the pornography outlets are located."

OKLAHOMA CITY, OKLAHOMA

March 3, 1986

This study contained the results of a survey of 100 Oklahoma City Real Estate Appraisers. Appraisers were given a hypothetical situation and a section to comment on the effects of sexually oriented businesses in Oklahoma City. The hypothetical situation presented a residential neighborhood bordering an arterial street with various commercial properties which served the area. A building vacated by a hardware store was soon to be occupied by an "adult" bookstore. No other sexually oriented businesses were in the area and no other vacant commercial space existed. With less than a one month response time, 34 completed surveys were received by the city.

Thirty-two percent of the respondents said that such a bookstore within one block of the residential area would decrease home values by at least 20 percent. Overwhelmingly, respondents said an "adult" bookstore would negatively affect other businesses within one block (76 percent). The level of depreciation is greater for residents than businesses. The negative effects on property values drop sharply when the sexually oriented business is at least three blocks away. In the subjective portion, 86 percent of the respondents noted a negative impact of sexually oriented businesses on Oklahoma City. Frequent problems cited by the appraisers included the attraction of undesirable clients and businesses,

safety threats to residents and other shoppers (especially children), deterrence of home sales and rentals, and immediate area deterioration (trash, debris, vandalism).

Oklahoma City's findings supported results from other national studies and surveys. Sexually oriented businesses have a negative effect on property values, particularly residential properties. The concentration of sexually oriented businesses may mean large losses in property values.

AMARILLO, TEXAS

September 12, 1977

This Planning Department report cited several sources including national news magazines, "adult business" ordinances from other cities, an American Society of Planning Officials report, and pertinent Supreme Court decisions. Lengthy explanation of the *Miller* Test with legal definitions, discussion of *Young v. American Mini Theatres*, and a comparison of the Boston and Detroit zoning models are included. The city defined "adult businesses" as taverns, lounges, lounges with semi-nude entertainment, and bookstores or theaters with publications featuring nudity and explicit sexual activities. (At the time, Amarillo had three such theaters and four bookstores with space for such publications).

The police department provided an analysis showing that areas of concentrated "adult only" businesses had two and one-half times the street crimes as the city average. The Planning Department concluded that concentrations of these businesses have detrimental effects on residential and commercial activities caused by: (1) noise, lighting, and traffic during late night hours; (2) increased opportunity for street crimes; and (3) the tendency of citizens to avoid such business areas. The study noted that lack of zoning regulations would lead to concentrations of sexually oriented businesses (causing increased crime) or more such establishments locating near residential areas or family and juvenile oriented activity sites (churches, parks, etc.).

The report recommended: (1) adult businesses locate 1,000 feet from each other (no distance was specified from residential zones or family/juvenile activities); (2) city development of an amortization schedule and permit/licensing mechanism; (3) city regulation of signs and similar forms of advertising; (4) vigorous enforcement of State Penal Code, especially relating to "Harmful to Minors"; (5) city amendments prohibiting minors from viewing or purchasing sexually oriented materials (enforced physical barriers).

AUSTIN, TEXAS

May 19, 1986

The report was the basis for developing an amendment to existing sexually oriented business ordinances. At the time, 49 such businesses operated in Austin, mostly bookstores, theaters, massage parlors, and topless bars. The study examined crime rates, property value, and trade area characteristics. The study is also useful because it summarizes many other city studies.

The report focused on sexually related crimes in four study areas (with sexually oriented businesses) and four control areas (close to study areas and similar). Two study areas had one sexually oriented business and the others had two such businesses. To determine the effects of these businesses on property values, the city sent surveys to 120 real estate appraising or listing firms

(nearly half responded). For trade area characteristics, three businesses (a bookstore, theater, and topless bar) were observed on a weekend night to determine customer addresses.

Sexually related crime ranged from 177 to 482 percent higher in the four study areas than the city average. In the two study areas containing two sexually oriented businesses, the rate was 66 percent higher than in the study areas with one such business. All control areas had crime rates near the city average.

Eighty-eight percent said that a sexually oriented business within one block of a residential area decreases the value of the homes (33 percent said depreciation would be at least 20 percent). Respondents also said such a business is a sign of neighborhood decline, making underwriters hesitant to approve the 90 to 95 percent financing most home buyers require. They said commercial property is also negatively affected by such businesses.

Of 81 license plates traced for owner addresses, only three lived within one mile of the sexually oriented business; 44 percent were from outside Austin.

The report recommended: (1) sexually oriented businesses should be limited to highway or regionally-oriented zone districts; (2) businesses should be dispersed to avoid concentration; and (3) conditional use permits should be required for these businesses.

BEAUMONT, TEXAS

September 14, 1982

This report by the city Planning Department encouraged amendments to existing "adult business" ordinances to include eating or drinking places featuring sexually oriented entertainment (strippers, etc.). Zoning laws required "adult uses" to locate 500 feet from residential areas; 300 feet from any other adult bookstore, adult theater, bar, pool hall, or liquor store; and 1,000 feet from a church, school, park, or recreational facility where minors congregate.

Police verified that bars, taverns, and lounges (especially those with sexually oriented entertainment) are frequent scenes of prostitution and the sale/ use of narcotics. On the whole, all criminal activity was higher at sexually oriented businesses.

The report recommended: (1) adding eating/drinking places that exclude minors (under Texas law), unless accompanied by a consenting parent, guardian, or spouse, to list of protected uses; (2) require specific permits for areas zoned as General Commercial-Multiple Family Dwelling Districts; and (3) reduce the required distance of sexually oriented businesses from residential areas, schools, parks, and recreational facilities from 1,000 to 750 feet.

HOUSTON, TEXAS

November 3, 1983

Report by the Committee on the Proposed Regulation of Sexually Oriented Businesses determined the need and appropriate means of regulating such businesses. Four public hearings provided testimony from residents, business owners, realtors, appraisers, police, and psychologists. The committee and legal department then reviewed the transcripts and drafted a proposed ordinance. More hearings obtained public opinion on the proposal and the ordinance was refined for vote by the City Council.

The testimony was summarized into six broad premises:

1. The rights of individuals were affirmed.
2. Sexually oriented businesses can exist with regulations that minimize their adverse effects.
3. The most important negative effects were on neighborhood protection, community enhancement, and property values.
4. Problems increased when these businesses were concentrated.
5. Such businesses contributed to criminal activities.
6. Enforcement of existing statutes was difficult.

The proposed ordinance: (1) required permits for sexually oriented businesses (non-refundable \$350 application fee); (2) imposed distance requirements of 750 feet from a church or school, 1,000 feet from other such businesses, and 1,000 feet radius from an area of 75 percent residential concentration; (3) imposed an amortization period of six months that could be extended by the city indefinitely on the basis of evidence; (4) required revocation of permit for employing minors (under 17), blighting exterior appearance or signage, chronic criminal activity (three convictions), and false permit information; and (5) required age restrictions for entry.

SEATTLE, WASHINGTON

March 24, 1989

The report concerned a proposed amendment to add topless dance halls to existing land use regulations for "adult entertainment establishments." Seattle had eight such dance halls (termed "adult cabarets"), six established since 1987. The study relied on reports from a number of cities, including Indianapolis, Los Angeles, Phoenix, Austin, and Cleveland.

The increased number of cabarets resulted in citizen complaints, including phone calls, letters (from individuals and merchant associations), and several petitions with hundreds of signatures. Protests cited decreased property values; increased insurance rates; fears of burglary, vandalism, rape, assaults, drugs, and prostitution; and overall neighborhood deterioration. The report noted that patrons of these cabarets most often are not residents of nearby neighborhoods. Without community identity, behavior is less inhibited. Increased police calls to a business, sirens, and traffic hazards from police and emergency vehicles are not conducive to healthy business and residential environments.

Since city zoning policy is based on the compatibility of businesses, the report recommended the cabarets locate in the same zones as "adult motion picture theaters." This plan allows about 130 acres for such businesses to locate throughout the city.

A record vote was requested.

Amendment No. 122 was adopted by (Record 239): 135 Yeas, 5 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Burnam; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Craddick; Cuellar; Culberson; Danburg; Davila; Davis; Delisi; Denny; Driver; Dunnam; Edwards; Ehrhardt; Eiland; Elkins; Finnell; Flores; Gallego; Galloway; Garcia; Giddings; Goodman; Goolsby; Gray;

Greenberg; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Hodge; Holzheuser; Horn; Howard; Hunter; Isett; Jackson; Janek; Jones, D.; Jones, J.; Junell; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Maxey; McCall; McClendon; McReynolds; Merritt; Moffat; Mowery; Naishtat; Nixon; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Raymond; Reyna, A.; Reyna, E.; Rhodes; Roman; Sadler; Seaman; Serna; Shields; Siebert; Smith; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williams; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbrank.

Nays — Crabb; Farrar; Heflin; Hupp; Talton.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Dukes; Dutton.

Absent — Glaze; Grusendorf; Hinojosa; Marchant; Moreno; Rangel.

Amendment No. 121, as amended, was adopted without objection.

Amendment No. 124

Representative Madden offered the following amendment to **CSHB 4**:

Floor Packet Page No. 331

Amend **CSHB 4** by eliminating in its entirety ARTICLE 10, deleting from the bill all text beginning on page 360, line 11, and ending on page 361, line 23, providing a corrected numbering sequence.

Amendment No. 124 was withdrawn.

Amendment No. 125

Representative Madden offered the following amendment to **CSHB 4**:

Floor Packet Page No. 333

Amend **CSHB 4** by eliminating in its entirety ARTICLE 11, deleting from the bill all text beginning on page 361, line 24, and ending on page 362, line 4, providing a corrected numbering sequence.

(Chisum in the chair)

Representative Williamson moved to table Amendment No. 125.

The motion to table prevailed.

(Speaker in the chair)

Amendment No. 126

Representatives Sadler and Kubiak offered the following amendment to **CSHB 4**:

Floor Packet Page No. 340

Amend **CSHB 4** as follows:

Amend Article 15, beginning on line 12 of page 373, as follows:

Amend the title of the section to read "ARTICLE 15, COAL ~~AND LIGNITE~~ USE TAX"

Amend Chapter A, Section 162.001. DEFINITIONS, subparagraph (1), as follows:

"(1) "Coal" does not include s lignite."

Amendment No. 127

Representative Chisum offered the following amendment to Amendment No. 126:

Amend the Kubiak Amendment to **CSHB 4** by striking the text of the amendment and substituting the following:

Amend **CSHB 4** as follows:

(1) On page 373, line 12, strike "AND LIGNITE".

(2) On page 373, line 18, strike "includes" and substitute "does not include lignite, commonly referred to as brown coal, of intermediate grade between peat and bituminous coal".

(3) On page 373, strike lines 19-20.

(4) On page 373, line 21, strike "(3)" and substitute "(2)".

Amendment No. 127 was adopted without objection.

Amendment No. 126, as amended, was adopted without objection.

Amendment No. 128

Representative Allen offered the following amendment to **CSHB 4**:
Floor Packet Page No. 347

Amend **CSHB 4** as follows:

(1) On page 235, line 24, in Section 4.29 of the bill strike the word "horses,".

(2) Strike Article 16 in its entirety.

Amendment No. 129

Representative Allen offered the following amendment to Amendment No. 128:

Amend the Allen amendment to **CSHB 4** (on page 347 of the packet) to read as follows:

Amend **CSHB 4** as follows:

(1) On page 235, strike line 24 and substitute:

(1) [~~horses;~~] mules[;] and work animals, other than horses;

(2) On page 376, line 3 through page 378, line 21, strike Article 16 of the bill.

(3) Renumber the articles of the bill appropriately.

Amendment No. 129 was adopted without objection.

Representative Stiles moved to table Amendment No. 128.

The motion to table prevailed.

Amendment No. 130

Representative Garcia offered the following amendment to **CSHB 4**:
Floor Packet Page No. 348

Amend **CSHB 4**, Article 16 to read as follows:

(a) In section 6.08(c), page 376, line 9, strike "3.25" and substitute "one" in lieu of deleted language;

(b) In section 6.09(b)(1), page 377, line 7, strike "3.25" and substitute "one" in lieu of deleted language; and

(c) In section 6.091(a)(1), page 378, line 1, strike "3.25" and substitute "one" in lieu of deleted language.

Amendment No. 131

Representatives Yarbrough and Allen offered the following amendment to Amendment No. 130:

Amend the Garcia Amendment (page 348, amendment package) to **CSHB 4** to read as follows:

Amend **CSHB 4** as follows:

(1) On page 235, strike line 24 and substitute:

(1) cutting horses, mules, and work animals, other than horses that are not cutting horses;

(2) On page 376, line 4, through page 377, line 21, strike Sections 16.01 and 16.02 of the bill.

(3) On page 377, line 22, strike "SECTION 16.03" and substitute "SECTION 16.01".

(4) On page 378, line 1, strike "3.25" and substitute "2.2".

(5) On page 378, line 21, strike "SECTION 16.04" and substitute "SECTION 16.02".

Amendment No. 131 was adopted without objection. (Hupp and Junell recorded voting no) (The vote was reconsidered later today, and Amendment No. 131 was withdrawn.)

Amendment No. 130, as amended, was adopted without objection. (The vote was reconsidered later today, and Amendment No. 130, amended by Amendment No. 138, was adopted.)

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today because of important business:

Rabuck on motion of Goolsby.

CSHB 4 - (consideration continued)**Amendment No. 132**

Representative Isett offered the following amendment to **CSHB 4**:

Floor Packet Page No. 354

Amend **CSHB 4** by striking Article 21 of the bill and renumbering subsequent articles of the bill appropriately.

Representative Berlanga moved to table Amendment No. 132.

A record vote was requested.

The motion to table prevailed by (Record 240): 85 Yeas, 56 Nays, 2 Present, not voting.

Yeas — Alexander; Alvarado; Bailey; Berlanga; Bosse; Brimer; Burnam; Chavez; Chisum; Clark; Coleman; Cook; Counts; Cuellar; Danburg; Davila; Davis; Dunnam; Edwards; Ehrhardt; Eiland; Farrar; Finnell; Flores; Gallego; Garcia; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Gutierrez; Haggerty; Hawley; Hernandez; Hightower; Hilbert; Hinojosa; Hirschi; Hochberg; Hodge; Jones, J.; Junell; Kamel; Keel; Lewis, G.; Lewis, R.; Longoria; Luna; Maxey; McClendon; McReynolds; Moffat; Moreno; Naishtat; Oliveira; Olivo; Pickett; Place; Price; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Rhodes; Sadler; Serna; Smith; Solis; Stiles; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Van de Putte; Williamson; Wilson; Wise; Wolens; Yarbrough; Zbraneck.

Nays — Allen; Averitt; Bonnen; Carter; Christian; Corte; Crabb; Craddick; Culberson; Delisi; Denny; Driver; Elkins; Galloway; Grusendorf; Hamric; Heflin; Hilderbran; Hill; Holzheuser; Horn; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Keffer; King; Krusee; Kubiak; Kuempel; Madden; Marchant; McCall; Merritt; Mowery; Nixon; Palmer; Patterson; Pitts; Reyna, E.; Roman; Shields; Siebert; Smithee; Solomons; Staples; Talton; Uher; Walker; West; Williams; Wohlgemuth; Woolley.

Present, not voting — Mr. Speaker(C); Hartnett.

Absent, Excused — Dukes; Dutton; Rabuck.

Absent — Oakley; Seaman; Swinford.

Amendment No. 133

Representative Isett offered the following amendment to **CSHB 4**:

Floor Packet Page No. 355

Amend **CSHB 4** in Article 21 of the bill, on page 388, line 26, through page 393, line 21, by striking Section 21.01 and substituting the following:

SECTION 21.01. Chapter 31, Tax Code, is amended by adding Section 31.011 to read as follows:

Sec. 31.011. NOTICE OF TAX SAVINGS TO TENANTS OF RESIDENTIAL RENTAL PROPERTY. (a) This section applies only to a dwelling unit included in a property on which school district property taxes were imposed in both 1996 and 1997.

(b) Not later than March 1, 1998, each landlord shall give written notice to each tenant residing on that date in a dwelling unit rented or leased by the landlord of the landlord's 1997 school tax savings for that dwelling unit. The 1997 school tax savings for each dwelling unit is determined by apportioning the 1997 school tax savings for the property to all dwelling units included in the property in proportion to the rent charged for each dwelling unit as of January 1, 1998, or the most recent date before January 1, 1998, on which the

dwelling unit was occupied. The 1997 school tax savings for each property is equal to the difference between the school district taxes imposed on the property in 1996 and those imposed in 1997, if the taxes imposed in 1997 are less than those imposed in 1996. If the taxes imposed in 1997 are equal to or greater than those imposed in 1996, this section does not apply to dwelling units contained in that property.

(c) The assessor for each school district shall include a statement of the amount of each property's 1997 school tax savings in each school district tax bill prepared for 1997 taxes imposed on residential property. If portions of the property are used for commercial purposes unrelated to the residential use of the dwelling units, the landlord may subtract the fair market value of that portion of the property from the 1997 school tax savings for the property before apportioning the school tax savings for the property to the dwelling units.

(d) The comptroller shall prescribe the form of a notice to be provided under Subsection (b). The collector shall include that information in a document accompanying each 1997 school district tax bill for residential property.

(e) A landlord who fails to provide a notice to a tenant as required by this section is liable to the state for a civil penalty of not more than \$20 for each day the landlord fails to provide the notice, not to exceed \$1,000 for each dwelling unit to which the penalty applies. The attorney general or a county or district attorney may sue to collect the penalty.

(f) In this section:

(1) "Dwelling unit" means a structure or separately secured portion of a structure designed or used for human habitation by an individual or group of individuals constituting a single household.

(2) "Landlord" means a person who owns property containing one or more dwelling units held for rent or lease, except that a person who leases property containing more than one dwelling unit from the owner of the property and leases the dwelling units without direct supervision or control by the owner is considered the owner of the property.

(3) "Rent" includes the total amount charged by a landlord or by another person on the landlord's behalf for the use and occupancy of a dwelling unit, not including refundable property deposits.

(4) "Tenant" means a person who rents or leases a dwelling unit.

(g) This section expires January 1, 2000.

Representative Berlanga moved to table Amendment No. 133.

A record vote was requested.

The motion to table prevailed by (Record 241): 84 Yeas, 58 Nays, 1 Present, not voting.

Yeas — Alexander; Alvarado; Averitt; Bailey; Berlanga; Bosse; Brimer; Burnam; Chavez; Chisum; Clark; Coleman; Cook; Counts; Cuellar; Danburg; Davila; Davis; Dunnam; Edwards; Ehrhardt; Farrar; Flores; Gallego; Garcia; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Gutierrez; Haggerty; Hawley; Hernandez; Hightower; Hilbert; Hinojosa; Hirschi; Hochberg; Hodge; Jones, J.; Junell; King; Kubiak; Lewis, G.; Lewis, R.; Longoria; Luna; Maxey; McClendon; McReynolds; Moreno; Naishtat; Oliveira; Olivo; Pickett; Place;

Price; Puente; Rangel; Raymond; Reyna, A.; Rhodes; Sadler; Serna; Solis; Stiles; Swinford; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; Williamson; Wilson; Wise; Wolens; Yarbrough; Zbranek.

Nays — Allen; Bonnen; Carter; Christian; Corte; Crabb; Craddick; Culberson; Delisi; Denny; Driver; Eiland; Elkins; Finnell; Galloway; Grusendorf; Hamric; Hartnett; Heflin; Hilderbran; Hill; Holzheuser; Horn; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Kamel; Keel; Keffer; Krusee; Kuempel; Madden; Marchant; McCall; Merritt; Moffat; Mowery; Nixon; Palmer; Patterson; Pitts; Reyna, E.; Roman; Shields; Siebert; Smith; Smithee; Solomons; Staples; Talton; West; Williams; Wohlgenuth; Woolley.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Dukes; Dutton; Rabuck.

Absent — Oakley; Ramsay; Seaman.

STATEMENT OF VOTE

When Record No. 241 was taken, my machine malfunctioned. I would have voted no.

Ramsay

Amendment No. 134

Representative Berlanga offered the following amendment to **CSHB 4**:

Floor Packet Page No. 358

Amend **CSHB 4** by deleting Article 21 in its entirety and inserting the following:

ARTICLE 21. RESIDENTIAL TENANT'S TAX RELIEF

SECTION 21.01. Title 1, Tax Code, is amended by adding Chapter 51 to read as follows:

CHAPTER 51. PROPERTY TAX RELIEF FOR RESIDENTIAL TENANTS

Sec. 51.001. TAX SAVINGS FOR RESIDENTIAL TENANTS. To ensure that residential rental tenants receive direct and immediate benefit from the reduction in local ad valorem school taxes until the benefit of such tax relief is fully reflected in rental rates through free market competition, every residential landlord shall have the option of giving a monthly rent credit or rebate to tenants who are renting a residential dwelling unit in this state between January 1, 1998 and December 31, 1999.

Sec. 51.002. DEFINITIONS. In this chapter:

(1) "Landlord" means the owner, lessor, or sublessor of a dwelling, but does not include a manager or agent of the landlord unless the manager or agent purports to be the owner, lessor, or sublessor in a written or oral lease.

(2) "Lease" means a written or oral agreement between a landlord and tenant that establishes or modifies the terms, condition, rules, or other provisions regarding the use and occupancy of a dwelling.

(3) "Multifamily rental dwelling project" means any multiunit rental project with two or more rental dwelling units, including: duplexes, apartments, dormitories, manufactured housing communities, and all other multiunit rental housing subject to local school ad valorem taxes.

(4) "Rent" includes the total amount charged by a landlord, or by another person on the landlord's behalf, for the use and occupancy of a dwelling unit, not including refundable security deposits.

(5) "Rental dwelling unit" means one or more rooms rented for use as a permanent residence under a single lease to one or more tenants.

(6) "Tenant" means an individual who is authorized by a lease to occupy a dwelling to the exclusion of others and is obligated under the lease to pay rent.

Sec. 51.003. CREDIT OR REBATE TO TENANT OF LANDLORD'S PROPERTY TAX SAVINGS. A landlord is obligated to provide a tenant with a monthly credit or rebate on rents to reflect a portion of the landlord's local ad valorem school tax savings for 1997 and 1998, as provided by this chapter.

Sec. 51.004. APPLICATION. (a) This chapter applies only to a dwelling unit or multifamily rental dwelling project that is subject to the local ad valorem school tax.

(b) This chapter does not apply to a temporary residential tenancy created by a contract of sale in which the buyer occupies the property before closing or the seller occupies the property after closing for a term not to exceed 90 days.

Sec. 51.005. NOTICE BY CENTRAL APPRAISAL DISTRICTS. (a) On or before October 1, 1997, or as soon thereafter as practicable, each central appraisal district shall send all residential property owners a notice describing the requirements of this chapter. The notice shall contain language substantially similar to the following:

"Due to the property tax relief law passed by the 1997 Texas Legislature, residential landlords are required to pass local ad valorem school tax savings along to residential tenants for all leases in effect as of January 1, 1998 and for all leases entered into in 1998 and 1999. These savings must be provided to tenants by giving a monthly rent credit or rebate equal to the amount of property tax savings on school property taxes. Failure to comply with this law could result in severe penalties, including a civil penalty of \$100, treble damages and attorney's fees. Information on complying with this law is available by contacting the (insert name, address and phone number of local central appraisal district) or by contacting the Texas Comptroller of Public Accounts by calling 1-800/252-5555."

(b) The notice required under Subsection (a) may be sent to property owners as part of another communication sent by the appraisal district in accordance with Section 31.01, Tax Code and does not have to be sent to property owners in the form of a separate communication.

(c) The central appraisal district shall place at least one advertisement monthly in a newspaper of general circulation in the county in which the central appraisal district is located during the months of November and December, 1997. The advertisement shall be in 14-point type or larger and contain language substantially similar to the language in Subsection (a) of this section.

Sec. 51.006. TECHNICAL ASSISTANCE BY COMPTROLLER OF PUBLIC ACCOUNTS. (a) Not later than September 1, 1997, the comptroller shall develop materials in plain language to assist landlords in complying with this chapter. Such information shall also be made available in Spanish. Copies of this information shall be sent to all central appraisal districts on or before

September 15, 1997 and shall also be provided without cost to property owners who contact the comptroller.

(b) The comptroller shall also provide any technical assistance necessary to assist central appraisal districts and landlords in complying with this chapter.

Sec. 51.007. TAX SAVINGS CALCULATIONS BY LANDLORDS. (a) A landlord shall determine the monthly local ad valorem school tax savings due to a tenant through a rent credit or rebate as follows:

(1) The monthly rent credit or rebate for a single family rental dwelling unit shall be equal to one-twelfth of the total difference between the local ad valorem school taxes for the dwelling unit for the previous year as compared to the taxes that would have been charged on the unit for the previous year if the unit had been taxed under the state ad valorem tax.

(2) The monthly rent credit or rebate for a rental dwelling unit in a multifamily rental dwelling project shall be equal to one-twelfth of the total difference between the local ad valorem school taxes for the multifamily dwelling project for the previous year as compared to the taxes that would have been charged on the unit for the previous year if the unit had been taxed under the state ad valorem tax, times the square footage in the tenant's dwelling unit, divided by the total net rentable square footage of all rental dwelling units in the multifamily rental dwelling project.

(b) The rent credit or rebate calculated under Subsection (a) shall be on a per-dwelling-unit basis and not on a per-tenant basis.

Sec. 51.008. DATE OF REQUIRED CREDIT OR REBATE. (a) If a landlord gives a monthly credit to a tenant under this chapter, the landlord shall give the credit on the due date for each month's rent.

(b) If a landlord pays a monthly rent rebate to the tenant, the landlord shall pay the rebate no later than 10 days after the tenant pays the entire rent due for the month. A landlord is presumed to have timely paid a rebate if the rebate is placed in the United States mail and postmarked on or before that date.

(c) If the rent is paid weekly, the credit or rebate shall equal 1/52 of the credit or rebate for the entire year.

Sec. 51.009. NOTICE TO TENANTS. (a) If a landlord and tenant entered into a lease prior to January 1, 1998, the landlord shall provide a notice to the tenant on or before January 5, 1998. The notice shall be in bold-faced, 14-point type or larger and state substantially the following:

"NOTICE OF TAX SAVINGS ON RENT

Your current monthly rent on (insert unit number or street address) is \$ (insert amount of rent).

Due to the property tax relief law passed by the 1997 Texas Legislature, the school property taxes for your dwelling unit have been reduced by (insert percentage savings) % for 1998 (or 1999). The property tax relief law provides that the property owner must pass along these tax savings to you and other tenants until sufficient time has elapsed for the tax relief to be fully reflected in rental rates through free market competition.

Accordingly, you will receive a rent credit (or rebate check) of \$ (insert monthly prorated amount) for the current month of January and for each month thereafter, until the expiration of your current lease or December 31, 1999, whichever date is first. The cumulative amount of property tax savings that will be passed on to you during the term of your lease as a result of the 1997

property tax relief legislation is \$ (insert cumulative savings for the unit for the term of the lease).

This means the net rent you will be paying for this month and each subsequent month under your current lease will be \$ (insert net rent rate). You will also be entitled to a rent credit or rebate if you enter into a new lease for any rental dwelling unit in Texas anytime in 1998 or 1999, through the expiration of your lease term or December 31, 1999, whichever date is first.

If you have any questions about this new law, please contact the local appraisal district at (insert address and phone number of local appraisal district)."

(b) If a landlord and tenant enter into a lease after January 1, 1998 and before December 31, 1999, the landlord shall provide a notice to the tenant at the time of signing the lease. The notice shall be in boldfaced, 14-point type or larger and shall state substantially the following:

"NOTICE OF TAX SAVINGS ON RENT

The monthly rent on (insert unit number or street address or dwelling unit) is \$ (insert amount of rent).

Due to the property tax relief law passed by the 1997 Texas Legislature, the school property taxes for your dwelling unit have been reduced by (insert percentage savings) % for 1998 (or 1999). The property tax relief law provides that the property owner must pass along these tax savings to you and other tenants until sufficient time has elapsed for the tax relief to be fully reflected in rental rates through free market competition.

Accordingly, you will receive a rent credit (or rebate check) of \$ (insert monthly prorated amount) for the first month of your lease and for each month thereafter, until the expiration of your current lease or December 31, 1999, whichever date is first. The cumulative amount of property tax savings that will be passed on to you during the term of your lease as a result of the 1997 property tax relief legislation is \$ (insert cumulative savings for the unit for the term of the lease).

This means the net rent you will be paying for this month and each subsequent month under your current lease will be \$ (insert net rent rate). You will also be entitled to a rent credit or rebate if you enter into a new lease for any rental dwelling unit in Texas anytime in 1998 or 1999, through the expiration of your lease term or December 31, 1999, whichever date is first.

If you have any questions about this new law, please contact the local appraisal district at (insert address and phone number of local appraisal district)."

Sec. 51.010. CREDIT OR REBATE FOR MULTIPLE TENANTS. If there are two or more tenants liable under a lease for the same rental dwelling unit, the credit or rebate shall be provided jointly to all tenants renting the dwelling.

Sec. 51.011 PENALTIES. (a) If a landlord fails to comply with this chapter, the landlord shall be liable to the tenant for a civil penalty of \$100 and treble the amount of any rent credit or rebate not provided to the tenant. In any litigation involving a rent credit or rebate, the prevailing party shall recover reasonable attorney's fees from the non-prevailing party.

Sec. 51.012. TAX APPRAISALS. For the calendar years 1997, 1998 and 1999, no state or local taxing authority may consider the reduction of local ad

valorem school taxes resulting from this chapter in any valuation leading to an increase in the appraised value of a residential rental dwelling unit or a multifamily rental dwelling project.

Sec. 51.013. EXPIRATION DATE. This chapter expires January 1, 2000.

Amendment No. 135

Representatives Berlanga, Luna, Davis, Stiles, Junell, Naishtat, Maxey, and Bailey offered the following amendment to Amendment No. 134:

Amend the Berlanga amendment to **CSHB 4**, which starts on page 358 of the amendments, by striking the amendment in its entirety and substituting the following:

Amend **CSHB 4** by deleting Article 21 (page 388, line 25 through page 393, line 22) in its entirety and inserting the following new Article 21:

ARTICLE 21. RESIDENTIAL TENANT'S TAX RELIEF

SECTION 21.01. Title 1, Tax Code, is amended by adding Chapter 51 to read as follows:

CHAPTER 51. PROPERTY TAX RELIEF FOR RESIDENTIAL TENANTS

Sec. 51.001. TAX SAVINGS FOR RESIDENTIAL TENANTS. To ensure that residential rental tenants receive direct and immediate benefit from the reduction in local ad valorem school taxes until the benefit of such tax relief is fully reflected in rental rates through free market competition, every residential landlord shall have the option of giving either a monthly rent credit or rebate to tenants who are renting a residential dwelling unit in this state during the years 1998, 1999 and 2000.

Sec. 51.002. DEFINITIONS. In this chapter:

(1) "Landlord" means the owner, lessor, or sublessor of a dwelling, but does not include a manager or agent of the landlord unless the manager or agent purports to be the owner, lessor, or sublessor in a written or oral lease.

(2) "Lease" means a written or oral agreement between a landlord and tenant that establishes or modifies the terms, condition, rules, or other provisions regarding the use and occupancy of a dwelling.

(3) "Multifamily rental dwelling project" means any multiunit rental project with two or more rental dwelling units, including: duplexes, apartments, dormitories, manufactured housing communities, retirement centers and communities, assisted living centers, and all other multiunit rental housing subject to local school ad valorem taxes.

(4) "Rent" includes the total amount charged by a landlord, or by another person on the landlord's behalf, for the use and occupancy of a dwelling unit, not including refundable security deposits.

(5) "Rental dwelling unit" means one or more rooms rented for use as a permanent residence under a single lease to one or more tenants.

(6) "Tenant" means an individual who is authorized by a lease to occupy a dwelling to the exclusion of others and is obligated under the lease to pay rent.

Sec. 51.003. CREDIT OR REBATE TO TENANT OF LANDLORD'S PROPERTY TAX SAVINGS. A landlord is obligated to provide a tenant with a monthly credit or rebate on rents to reflect a portion of the landlord's local ad valorem school tax savings for 1997 and 1998, as provided by this chapter.

Sec. 51.004. APPLICATION. (a) This chapter applies only to a dwelling

unit or multifamily rental dwelling project that is subject to the local ad valorem school tax.

(b) This chapter does not apply to a temporary residential tenancy created by a contract of sale in which the buyer occupies the property before closing or the seller occupies the property after closing for a term not to exceed 90 days.

Sec. 51.005. NOTICE BY CENTRAL APPRAISAL DISTRICTS. (a) On or before October 1, 1997, or as soon thereafter as practicable, each central appraisal district shall send all residential property owners a notice describing the requirements of this chapter. The notice shall contain language substantially similar to the following:

"Due to the property tax relief law passed by the 1997 Texas Legislature, residential landlords are required to pass local ad valorem school tax savings along to residential tenants for all leases in effect as of January 1, 1998 and for all leases entered into in 1998, 1999 and 2000. These savings must be provided to tenants by giving a monthly rent credit or rebate that reflects a portion of the property tax savings on school property taxes. Failure to comply with this law could result in severe penalties, including a civil penalty of \$100, treble damages, and attorney's fees. Information on complying with this law is available by contacting the (insert name, address and phone number of local central appraisal district) or by contacting the Texas Comptroller of Public Accounts by calling 1-800/252-5555."

(b) The notice required under Subsection (a) may be sent to property owners as part of another communication sent by the appraisal district in accordance with Section 31.01, Tax Code and does not have to be sent to property owners in the form of a separate communication.

(c) The central appraisal district shall place at least one advertisement monthly in a newspaper of general circulation in the county in which the central appraisal district is located during the months of November and December, 1997. The advertisement shall be in 14-point type or larger and contain language substantially similar to the language in Subsection (a) of this section.

Sec. 51.006. TECHNICAL ASSISTANCE BY COMPTROLLER OF PUBLIC ACCOUNTS. (a) Not later than September 1, 1997, the comptroller shall develop materials in plain language to assist landlords in complying with this chapter. Such information shall also be made available in Spanish. Copies of this information shall be sent to all central appraisal districts on or before September 15, 1997 and shall also be provided without cost to property owners who contact the comptroller.

(b) The comptroller shall also provide any technical assistance necessary to assist central appraisal districts and landlords in complying with this chapter.

Sec. 51.007. TAX SAVINGS CALCULATIONS BY LANDLORDS. (a) A landlord shall determine the monthly local ad valorem school tax savings due to a tenant through a rent credit or rebate as follows:

(1) The monthly rent credit or rebate for a single family rental dwelling unit shall be equal to one-twelfth of the total difference between the local ad valorem school taxes for the dwelling unit for the previous year as compared to the taxes that would have been charged on the unit for the previous year if the unit had been taxed under the state ad valorem tax.

(2) The monthly rent credit or rebate for a rental dwelling unit in a multifamily rental dwelling project shall be equal to one-twelfth of the total difference between the local ad valorem school taxes for the multifamily dwelling project for the previous year as compared to the taxes that would have been charged on the unit for the previous year if the unit had been taxed under the state ad valorem tax, times the square footage in the tenant's dwelling unit, divided by the total net rentable square footage of all rental dwelling units in the multifamily rental dwelling project.

(b) The rent credit or rebate calculated under Subsection (a) shall be on a per-dwelling-unit basis and not on a per-tenant basis.

Sec. 51.008. DATE OF REQUIRED CREDIT OR REBATE. (a) If a landlord gives a monthly credit to a tenant under this chapter, the landlord shall give the credit on the due date for each month's rent.

(b) If a landlord pays a monthly rent rebate to the tenant, the landlord shall pay the rebate no later than 10 days after the tenant pays the entire rent due for the month. A landlord is presumed to have timely paid a rebate if the rebate is placed in the United States mail and postmarked on or before that date.

(c) If the rent is paid weekly, the credit or rebate shall equal 1/52 of the credit or rebate for the entire year.

Sec. 51.009. NOTICE TO TENANTS. (a) If a landlord and tenant entered into a lease prior to January 1, 1998, the landlord shall provide a notice to the tenant on or before January 5, 1998. The notice shall be in bold-faced, 14-point type or larger and state substantially the following:

"NOTICE OF TAX SAVINGS ON RENT

Your current monthly rent on (insert unit number or street address) is \$ (insert amount of rent).

Due to the property tax relief law passed by the 1997 Texas Legislature, the school property taxes for your dwelling unit have been reduced by (insert percentage savings) % for 1998 (or 1999). The property tax relief law provides that the property owner must pass along these tax savings to you and other tenants until sufficient time has elapsed for the tax relief to be fully reflected in rental rates through free market competition.

Accordingly, you will receive a rent credit (or rebate check) of \$ (insert monthly prorated amount) for the current month of January and for each month thereafter, until the expiration of your current lease or December 31, 1999, whichever date is first. The cumulative amount of property tax savings that will be passed on to you during the term of your lease as a result of the 1997 property tax relief legislation is \$ (insert cumulative savings for the unit for the term of the lease).

This means the net rent you will be paying for this month and each subsequent month under your current lease will be \$ (insert net rent rate). You will also be entitled to a rent credit or rebate if you enter into a new lease for any rental dwelling unit in Texas anytime in 1998, 1999, or 2000, through the expiration of your lease term or December 31, 2000, whichever date is first.

If you have any questions about this new law, please contact the local appraisal district at (insert address and phone number of local appraisal district)."

(b) If a landlord and tenant enter into a lease anytime in 1998, 1999, or 2000, the landlord shall provide a notice to the tenant at the time of signing

the lease. The notice shall be in boldfaced, 14-point type or larger and shall state substantially the following:

"NOTICE OF TAX SAVINGS ON RENT

"The monthly rent on (insert unit number or street address or dwelling unit) is \$ (insert amount of rent).

"Due to the property tax relief law passed by the 1997 Texas Legislature, the school property taxes for your dwelling unit have been reduced by (insert percentage savings) % for 1998 (or 1999 or 2000). The property tax relief law provides that the property owner must pass along these tax savings to you and other tenants until sufficient time has elapsed for the tax relief to be fully reflected in rental rates through free market competition.

"Accordingly, you will receive a rent credit (or rebate check) of \$ (insert monthly prorated amount) for the first month of your lease and for each month thereafter, until the expiration of your current lease or December 31, 1999, whichever date is first. The cumulative amount of property tax savings that will be passed on to you during the term of your lease as a result of the 1997 property tax relief legislation is \$ (insert cumulative savings for the unit for the term of the lease).

"This means the net rent you will be paying for this month and each subsequent month under your current lease will be \$ (insert net rent rate). You will also be entitled to a rent credit or rebate if you enter into a new lease for any rental dwelling unit in Texas anytime in 1998, 1999, or 2000 through the expiration of your lease term or December 31, 2000, whichever date is first.

"If you have any questions about this new law, please contact the local appraisal district at (insert address and phone number of local appraisal district)."

(c) The notices required in subsections (a) and (b) shall be required to be translated and printed in Spanish in any county whose hispanic population exceeds 25% of the total population as demonstrated in the most recent census figures available.

Sec. 51.010. CREDIT OR REBATE FOR MULTIPLE TENANTS. If there are two or more tenants liable under a lease for the same rental dwelling unit, the credit or rebate shall be provided jointly to all tenants renting the dwelling.

Sec. 51.011 PENALTIES. (a) If a landlord fails to comply with this chapter, the landlord shall be liable to the tenant for a civil penalty of \$100 and treble the amount of any rent credit or rebate not provided to the tenant. In any litigation involving a rent credit or rebate, the prevailing party shall recover reasonable attorney's fees from the non-prevailing party.

Sec. 51.012. TAX APPRAISALS. For the calendar years 1997, 1998, 1999, and 2000, no state or local taxing authority may consider the reduction of local ad valorem school taxes resulting from this chapter in any valuation leading to an increase in the appraised value of a residential rental dwelling unit or a multifamily rental dwelling project.

Sec. 51.013 COMPTROLLER STUDY. (a) The comptroller shall issue a preliminary report no later than March 1, 1999, if sufficient data is available, and shall issue a final report no later than December 1, 2000 to the governor, the lieutenant governor, and the speaker of the house of representatives on the implementation, administration, and effect of this chapter, including findings as to the following:

(1) the impact of property tax relief on rental rates throughout the state considering competitive market conditions, new construction, operating expenses, and other relevant factors impacting rental rates;

(2) the number of civil actions filed against landlords, and the type of properties owned by those landlords, by tenants to enforce the provisions of this chapter;

(3) the number of civil penalties levied against landlords, and the type of properties owned by those landlords, for non-compliance with this chapter;

(4) the administrative costs associated with this chapter incurred by the comptroller, the central appraisal districts, and landlords; and

(5) any effect of lower local ad valorem school tax rates on increasing the supply of affordable housing for either purchase or rent by a person for use as a dwelling.

(b) In filing the report, the comptroller shall consider the need to recommend alternative methods for providing ad valorem school tax relief to persons who rent their dwelling.

Sec. 51.014. EXPIRATION DATE. This chapter expires January 1, 2001.

Amendment No. 135 was adopted.

Amendment No. 134, as amended, was adopted. (Berlanga and King recorded voting yes)

Amendment No. 136

Representative Patterson offered the following amendment to **CSHB 4**:

Floor Packet Page No. 382

Amend **CSHB 4** as follows:

(1) On page 393, between lines 22 and 23, insert a new article to read as follows:

ARTICLE 22. FINANCIAL INSTITUTIONS OCCUPATION TAX

SECTION 22.01. Title 2, Tax Code, is amended by adding Subtitle K to read as follows:

SUBTITLE K. OCCUPATION TAXES **CHAPTER 231. FINANCIAL INSTITUTIONS OCCUPATION TAX** **SUBCHAPTER A. DEFINITIONS**

Sec. 231.001. DEFINITIONS. In this chapter:

(1) "Bank" means a state or national bank, domestic or foreign bank, or a bank organized under Section 25(a) of the Federal Reserve Act (12 U.S.C. Sections 611-631) (edge corporations) but does not include a bank holding company as defined by Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. Section 1841).

(2) "Branch" means a facility operated by a financial institution at which the financial institution receives deposits, pays checks, or lends money, but does not include:

- (A) the principal office of the financial institution;
- (B) an automatic teller machine; or
- (C) a drive-in facility.

(3) "Charitable organization" means any organization exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Sections 501(c)(3) through 501(c)(10) of the code.

(4) "Deposits" means the balance of money or its equivalent held by a financial institution in the usual course of business for which the financial institution has given or is obligated to give credit, conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account or that is evidenced by a certificate of deposit.

(5) "Financial institution" means a bank or a savings and loan association.

(6) "Local area" means a financial institution's local community, as delineated under federal regulations adopted under the Community Reinvestment Act of 1977 (12 U.S.C. Section 2901 et seq.).

(7) "Local area borrower" means a borrower that is an individual residing in a financial institution's local area or in the local area of one of its branches, a business having its principal place of business in the institution's local area or in the local area of one of its branches, or an entity conducting the majority of its affairs in the institution's local area or in the local area of one of its branches.

(8) "Savings and loan association" means a savings and loan association or a savings bank organized under the laws of this state, another state, or the United States.

(9) "Tax" means the occupation tax imposed by this chapter.

[Sections 231.002-231.020 reserved for expansion]

SUBCHAPTER B. TAX IMPOSED; PAYMENT AND REPORTS

Sec. 231.021. TAX IMPOSED; RATE. (a) A tax is imposed on a financial institution that engages in the business of accepting deposits in this state.

(b) The tax rate is three percent of the average annual net taxable deposits of the financial institution.

Sec. 231.022. REGULAR ANNUAL PERIOD COVERED BY TAX. The tax is for a regular annual period beginning each year on May 1 and ending the following April 30.

Sec. 231.023. DATE ON WHICH PAYMENT IS DUE. Payment of the tax is due March 15 of each year before the beginning of the regular annual period.

Sec. 231.024. PAYMENT TO COMPTROLLER. A financial institution shall pay the tax to the comptroller.

Sec. 231.025. REPORTS. (a) Each financial institution in this state shall report to the comptroller on or before March 15 of the year after the year in which the fiscal year ends.

(b) The report must include for the computation period covered by the report:

(1) the total deposits of the institution;

(2) the allocations of deposits among the principal office and branches as required by Section 231.045 if the institution's annual gross deposits are \$1 billion or more;

(3) the value of loans made to local area borrowers that qualify for deductions under this chapter if the institution's annual gross deposits are \$1 billion or more; and

(4) any other information required by the comptroller's rules.

Sec. 231.026. PAYMENT AND REPORTING; NEW INSTITUTIONS. (a) The comptroller by rule shall provide for the reporting, computation, and payment of the tax for financial institutions that begin accepting deposits in this state after May 1, 1994.

(b) The rules shall provide for an initial period and a second period for the payment of the tax in the same manner as the franchise taxes imposed under Chapter 171 are paid and reported for corporations that begin doing business in this state.

[Sections 231.027-231.040 reserved for expansion]

SUBCHAPTER C. COMPUTATION OF TAX

Sec. 231.041. COMPUTATION PERIOD. The tax covering the regular annual period for a financial institution is determined on a computation period consisting of the institution's fiscal year that ends in the year before the year in which the tax is due.

Sec. 231.042. AVERAGE ANNUAL GROSS DEPOSITS. A financial institution shall determine its average annual gross deposits for a computation period by dividing the sum of the daily deposits for the computation period by 365.

Sec. 231.043. GROSS TAXABLE DEPOSITS. A financial institution shall determine its gross taxable deposits for a computation period by subtracting from the institution's average annual gross deposits for the computation period:

(1) \$1 billion;

(2) the average annual deposits made at the institution by other financial institutions;

(3) the average annual deposits made at the institution by the federal or state government or any political subdivision of the state government, or any board, commission, department, institution, agency, or office within the federal or state government or within a political subdivision of the state government;

(4) the average annual deposits made at the institution by foreign countries; and

(5) the average annual deposits made at the institution by an individual who is not a citizen of the United States and who is not a resident of this state or by a legal entity that is created under a charter or other authorization issued by a foreign country and that is not engaged in business in this state.

Sec. 231.044. AVERAGE ANNUAL NET TAXABLE DEPOSITS. A financial institution shall determine its average annual net taxable deposits for a computation period by subtracting from its gross taxable deposits for the computation period:

(1) the product of 1.75 and the average annual balance of the institution's loans made to local area borrowers; and

(2) the amount of cash contributed by the institution to charitable organizations in the institution's local area.

Sec. 231.045. ALLOCATIONS AMONG BRANCHES. (a) A financial institution that has a principal office and one or more branches in this state shall

report its average annual gross deposits, gross taxable deposits, and average annual net taxable deposits separately for the office and each branch, using the amounts of deposits and loans assigned to each facility. The \$1 billion deduction provided by Section 231.043(1) is allocated among an institution's office and branches according to each facility's proportionate share of the average annual gross deposits of the financial institution.

(b) If the allocations and assignments under Subsection (a) result in an office or branch having average annual net taxable deposits of less than zero, the financial institution may transfer the negative amount to the principal office or another branch and treat the amount as a deduction to that facility's average annual net taxable deposits.

(c) A financial institution may not carry an unused deduction from one computation period to a different computation period.

[Sections 231.046-231.060 reserved for expansion]

SUBCHAPTER D. ENFORCEMENT; PENALTIES

Sec. 231.061. EXAMINATION OF FINANCIAL INSTITUTIONS. To determine the tax liability of a financial institution, the comptroller may investigate or examine the records of the financial institution.

Sec. 231.062. INTEREST. (a) The yearly interest rate on the delinquent payment of the tax is 10 percent.

(b) A delinquent tax draws interest beginning on the 60th day after the date that the tax is due.

Sec. 231.063. PENALTY. A penalty of 10 percent of the tax due is imposed on a financial institution that does not pay the tax when due.

Sec. 231.064. STATE DEPOSITORY. The comptroller shall notify the state treasurer if a financial institution designated as a state depository under Chapter 404, Government Code, fails to report or pay the tax.

Sec. 231.065. PENALTY FOR FAILURE TO FILE REPORT. (a) A person commits an offense if the person fails to file a report as required by this chapter.

(b) An offense under this section is a Class A misdemeanor.

[Sections 231.066-231.080 reserved for expansion]

SUBCHAPTER E. ALLOCATION OF REVENUE; CREATION OF FUND

Sec. 231.081. ALLOCATION. The comptroller shall allocate the revenue from the tax as follows:

(1) one-quarter to the foundation school fund; and

(2) three-quarters to general revenue.

SECTION 22.02. Section 404.021, Government Code, is amended by adding Subsection (e) to read as follows:

(e) An institution is not eligible to be a state depository if the institution fails to report or pay the tax due under Chapter 231, Tax Code.

SECTION 22.03. Section 404.022, Government Code, is amended by amending Subsection (c) and adding Subsection (k) to read as follows:

(c) The application for designation as a state depository must include a statement:

(1) of the amount of the applicant's paid capital stock and permanent surplus, if any, or if the applicant is a private bank, the amount of net proprietorship;

(2) of the maximum amount of state funds the applicant will accept;
 (3) of the applicant's condition on the date the application is submitted;
 [and]

(4) that the books and accounts of the institution, if it is designated as a state depository, will be open at all times for inspection by the board or a member or accredited representative of the board; and

(5) that the institution reported and paid any tax due under Chapter 231, Tax Code, on or before the application date.

(k) If an institution previously designated as a state depository fails to report or pay the tax imposed by Chapter 231, Tax Code, the treasurer shall withdraw state funds from the institution, except that the treasurer is not required to withdraw funds at a time or in a manner that will result in loss to the state.

SECTION 22.04. (a) This article takes effect September 1, 1997.

(b) The first report and the first tax payable under Chapter 231, Tax Code, as added by this article, are due on or before March 15, 1998, for the regular annual period beginning May 1, 1998.

(2) Renumber the subsequent articles and sections of the bill appropriately.

Representative Sadler moved to table Amendment No. 136.

The motion to table prevailed.

Amendment No. 137

Representative Hirschi offered the following amendment to **CSHB 4**:
 Floor Packet Page No. 392

Amend **CSHB 4** by adding the following appropriately numbered article and renumbering subsequent articles accordingly:

ARTICLE __. EMISSIONS TAX

SECTION __.01. Title 2, Tax Code, is amended by adding Subtitle L to read as follows:

SUBTITLE L. POLLUTION TAXES

CHAPTER 251. EMISSIONS TAX

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 251.001. DEFINITIONS. In this chapter:

(1) "Emit" means to release into the air.

(2) "Regulated pollutant" means:

(A) a volatile organic compound;

(B) a pollutant subject to Section 111, federal Clean Air Act (42 U.S.C. Section 7411);

(C) a pollutant listed as a hazardous air pollutant under Section 112, federal Clean Air Act (42 U.S.C. Section 7412);

(D) a pollutant for which a national primary ambient air quality standard has been adopted, including carbon monoxide; or

(E) a pollutant that on September 1, 1997, is subject to regulation by the Texas Natural Resource Conservation Commission under the commission's rules, permits, or orders or by court order.

[Sections 251.002-251.020 reserved for expansion]

SUBCHAPTER B. IMPOSITION AND COLLECTION OF TAX

Sec. 251.021. TAX IMPOSED. (a) A tax is imposed on each person who owns or controls a facility, plant, or piece of equipment in this state that:

(1) emits in a state fiscal year at least 1,000 tons of one or more regulated pollutants; and

(2) is required to obtain a permit under Chapter 382, Health and Safety Code.

(b) The tax imposed by this chapter is in addition to any emissions fee, operating permit fee, inspection fee, or other fee imposed by the Texas Natural Resource Conservation Commission, any other state agency, or the federal government.

Sec. 251.022. RATE. The rate of the tax imposed by this chapter is \$26 for each ton of regulated pollutants emitted during a state fiscal year from a facility, plant, or piece of equipment described by Section 251.021(a).

Sec. 251.023. FORMS AND INFORMATION. The comptroller shall provide forms and information to each person required to pay the tax imposed by this chapter to assist the person in computing and paying the tax.

Sec. 251.024. PAYMENT OF TAX. Not later than January 1 of each year, each person subject to the tax imposed by this chapter shall send to the comptroller the amount of tax due under this chapter for the preceding state fiscal year.

Sec. 251.025. REPORTS. (a) On or before January 1 of each year, each person subject to the tax imposed by this chapter shall file with the comptroller a report stating:

(1) the amount of emissions of regulated pollutants during the preceding state fiscal year from each facility, plant, and piece of equipment described by Section 251.021(a); and

(2) any other information required by the comptroller.

(b) A person who owns or controls a permitted facility, plant, or piece of equipment in this state that emits in a state fiscal year less than 1,000 tons of regulated pollutants is not required to file a report under Subsection (a).

(c) To determine eligibility for the exemption provided by Subsection (b), the comptroller may require a person to file an information report with the comptroller that contains any information the comptroller requires for that determination.

Sec. 251.026. RECORDS. A person subject to the tax imposed by this chapter shall keep a complete record of:

(1) the amount of emissions of regulated pollutants during the preceding state fiscal year from each facility, plant, and piece of equipment described by Section 251.021(a); and

(2) any other information required by the comptroller.

Sec. 251.027. DISPUTE AS TO AMOUNT OF EMISSIONS. If there is a dispute as to the amount of emissions of regulated pollutants, the comptroller may request that the Texas Natural Resource Conservation Commission determine the actual level of emissions.

[Sections 251.028-251.050 reserved for expansion]

SUBCHAPTER C. PENALTIES AND OFFENSES

Sec. 251.051. INTEREST ON DELINQUENT TAX. A tax imposed by this chapter that is delinquent draws interest as provided by Section 111.060.

Sec. 251.052. PENALTY. (a) A person on whom a tax is imposed by this chapter and who fails to file a report as required by this chapter or does

not pay the tax when it is due forfeits to the state a penalty of 12 percent of the amount of delinquent tax.

(b) If a report required by this chapter is not filed or a tax imposed by this chapter is not paid within 30 days after it is due, the person on whom the tax is imposed forfeits to the state a penalty of an additional 12 percent of the amount of tax due.

Sec. 251.053. CRIMINAL PENALTY. (a) A person who violates this chapter commits an offense.

(b) An offense under this section is a Class C misdemeanor.

[Sections 251.054-251.070 reserved for expansion]

SUBCHAPTER D. ALLOCATION AND USE

Sec. 251.071. ALLOCATION OF TAX REVENUE. All of the revenue from the tax imposed by this chapter shall be deposited to the credit of the general revenue fund.

SECTION __.02. This article takes effect September 1, 1998, and applies to regulated pollutants emitted during the preceding state fiscal year.

Representative Kubiak moved to table Amendment No. 137.

The motion to table prevailed.

Amendment No. 130 - Vote Reconsidered

Representative Yarbrough moved to reconsider the vote by which Amendment No. 130 was adopted.

The motion to reconsider prevailed.

Amendment No. 131 - Vote Reconsidered

Representative Yarbrough moved to reconsider the vote by which Amendment No. 131 was adopted.

The motion to reconsider prevailed.

Amendment No. 131 was withdrawn.

Amendment No. 138

Representatives Junell, Williamson, Hupp, Holzheuser, and Swinford offered the following amendment to Amendment No. 130:

Amend the Garcia Amendment (page 348, amendment package) to **CSHB 4** to read as follows:

Amend **CSHB 4** as follows:

(1) On page 376, line 4, through page 377, line 21, strike Sections 16.01 and 16.02 of the bill.

(2) On page 377, line 22, strike "SECTION 16.03" and substitute "SECTION 16.01".

(3) On page 378, line 1, strike "3.25" and substitute "2.2".

(4) On page 378, line 21, strike "SECTION 16.04" and substitute "SECTION 16.02".

Amendment No. 138 was adopted without objection.

Amendment No. 130, as amended, was adopted without objection. (Talton recorded voting no)

Amendment No. 139

Representative Shields offered the following amendment to **CSHB 4**:
Floor Packet Page No. 403

Amend **CSHB 4** by adding an appropriately numbered SECTION to read as follows, and renumber the existing SECTIONS as appropriate:

SECTION _____. Subtitle B, Title 10, Government Code, is amended by adding Chapter 2059 to read as follows:

CHAPTER 2059. GOVERNOR'S COMMITTEE ON COST CONTROL

Sec. 2059.001. DEFINITION. In this chapter, "state agency":

(1) means an office, department, commission, or other agency in the executive branch of state government that is created by the constitution or a state statute and that has statewide jurisdiction; and

(2) does not include the office of the lieutenant governor.

Sec. 2059.002. COMMITTEE COMPOSITION. (a) The Governor's Private Sector Committee on Cost Control in State Government is composed of nine members appointed by the governor. A member of the committee must have the qualifications determined by the governor to be of benefit to the committee in administering its duties. As soon as possible after September 1, 1997, the governor shall appoint a number of members to the committee that is sufficient to allow the committee to begin its work.

(b) A member of the committee serves at the will of the governor.

(c) A person may not serve as a member of the committee if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the committee.

Sec. 2059.003. OFFICERS; COMPENSATION; MEETINGS. (a) The governor shall designate a presiding officer from among the members of the committee. The committee may elect other officers from its members as the committee considers appropriate.

(b) A member of the committee may not receive compensation for service on the committee.

(c) The committee shall meet at the call of the governor or of the presiding officer or as provided by rule of the governor's office. The committee shall hold its first meeting not later than October 1, 1997.

Sec. 2059.004. DUTIES. (a) The committee shall study how to control costs in state agencies and consider cost-control methods used in the private sector. The committee shall then advise the governor, the legislature, and the governing bodies of state agencies about improving management and reducing costs.

(b) The committee shall conduct in-depth reviews of the operations of state agencies as a basis for evaluating potential improvements in state agency operations.

(c) In performing its duties, the committee shall consider providing recommendations about:

(1) opportunities for increased efficiency and reduced costs in state agencies that can be accomplished through legislation or through executive branch action;

(2) situations in which managerial accountability can be enhanced and administrative control can be improved;

(3) opportunities for short-term and long-term managerial improvements;

(4) governmental expenditures, indebtedness, and personnel management; and

(5) specific situations in which further study would be justified by the potential savings.

(d) The committee shall hold at least five public meetings in various locations around the state.

Sec. 2059.005. AGENCY COOPERATION. The administrative head of a state agency shall provide to the committee information that is not excepted from required public disclosure under Chapter 552 that the committee requests in performing its duties, including information relating to the structure, organization, personnel, and operations of the agency.

Sec. 2059.006. GIFTS AND GRANTS; STAFF; RESOURCES. (a) The governor's office may accept gifts and grants, including the donation of labor or in-kind resources, on behalf of the committee to accomplish the objectives of this chapter.

(b) The governor's office and, at the request of the governor, a state agency may provide staff support and other resources to support the work of the committee.

Sec. 2059.007. APPLICABILITY OF ADVISORY COMMITTEE LAW. Article 6252-33, Revised Statutes, does not apply to the committee except for the provisions of Section 4 of that law.

Sec. 2059.008. FINAL REPORT; ABOLITION OF COMMITTEE. (a) Not later than June 1, 1998, the committee shall submit its final report to the governor and to the presiding officer of each house of the legislature.

(b) The committee is abolished upon the submission of its final report.

Amendment No. 140

Representative Shields offered the following amendment to Amendment No. 139:

Amend the Shields amendment to read as follows:

Amend **CSHB 4** by adding an appropriately numbered SECTIONS to read as follows, and renumber the existing SECTIONS as appropriate:

SECTION _____. Subtitle B, Title 10, Government Code, is amended by adding Chapter 2059 to read as follows:

CHAPTER 2059. COMMITTEE ON COST CONTROL

Sec. 2059.001. DEFINITION. In this chapter, "state agency":

(1) means an office, department, commission, or other agency in the executive branch of state government that is created by the constitution or a state statute and that has statewide jurisdiction; and

(2) does not include the office of the lieutenant governor.

Sec. 2059.002. COMMITTEE COMPOSITION. (a) The Private Sector Committee on Cost Control in State Government is composed of nine members. Five members are appointed by the governor, two members are appointed by the lieutenant governor, and two members are appointed by the speaker of the house of representatives. A member of the committee must have the

qualifications determined by the appointing officer to be of benefit to the committee in administering its duties. As soon as possible after September 1, 1997, the appointing officers shall appoint a number of members to the committee to begin its work.

(b) A member of the committee serves at the will of the appointing officer.

(c) A person may not serve as a member of the committee if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the committee.

Sec. 2059.003. OFFICERS; COMPENSATION; MEETINGS. (a) The governor shall designate a presiding officer from among the members of the committee. The committee may elect other officers from its members as the committee considers appropriate.

(b) A member of the committee may not receive compensation for service on the committee.

(c) The committee shall met at the call of the governor or of the presiding officer. The committee shall hold its first meeting not later than October 1, 1997.

Sec. 2059.004. DUTIES. (a) The committee shall study how to control costs in state agencies and consider cost-control methods used in the private sector. The committee shall then advise the governor, the legislature, and the governing bodies of state agencies about improving management and reducing costs.

(b) The committee shall conduct in-depth reviews of the operations of state agencies as a basis for evaluating potential improvements in state agency operations.

(c) In performing its duties, the committee shall consider providing recommendations about:

(1) opportunities for increased efficiency and reduced costs in state agencies that can be accomplished through legislation or through executive branch action;

(2) situations in which managerial accountability can be enhanced and administrative control can be improved;

(3) opportunities for short-term and long-term managerial improvements;

(4) governmental expenditures, indebtedness, and personnel management; and

(5) specific situations in which further study would be justified by the potential savings.

(d) The committee shall hold at least five public meetings in various locations around the state.

Sec. 2059.005. AGENCY COOPERATION. The administrative head of a state agency shall provide to the committee information that is not excepted from required public disclosure under Chapter 552 that the committee requests in performing its duties, including information relating to the structure, organization, personnel, and operations of the agency.

Sec. 2059.006. GIFTS AND GRANTS; STAFF; RESOURCES. (a) The governor's office may accept gifts and grants, including the donation of labor

or in-kind resources, on behalf of the committee to accomplish the objectives of this chapter.

(b) The governor's office and, at the request of the governor, a state agency may provide staff support and other resources to support the work of the committee.

Sec. 2059.007. APPLICABILITY OF ADVISORY COMMITTEE LAW. Article 6252-33, Revised Statutes, does not apply to the committee except for the provisions of Section 4 of that law.

Sec. 2059.008. FINAL REPORT; ABOLITION OF COMMITTEE. (a) Not later than November 1, 1998, the committee shall submit its final report to the governor and to the presiding officer of each house of the legislature.

(b) The committee is abolished upon the submission of its final report.

Amendment No. 140 was adopted without objection.

Amendment No. 139, as amended, was adopted without objection.

Amendment No. 141

Representative Gallego offered the following amendment to **CSHB 4**:
Floor Packet Page No. 480

Amend **CSHB 4** by striking all below the enacting clause and substituting the following:

ARTICLE 1. SCHOOL PROPERTY TAX CUT

SECTION 1.01. This Act may be known as the Property Tax Cut Act of 1997.

SECTION 1.02. Chapter 403, Government Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. TEXAS SCHOOL TRUST FUND

Sec. 403.351. DEFINITION. In this subchapter, "fund" means the Texas School Trust Fund created by Section 5-a, Article VII, Texas Constitution.

Sec. 403.352. ADMINISTRATION OF FUND. The comptroller shall administer the fund.

Sec. 403.353. INVESTMENT OF FUND. The comptroller shall invest money credited to the fund that is not immediately needed for payments under this subchapter in investments authorized by Chapter 2256.

Sec. 403.354. REIMBURSEMENT FOR ADDITIONAL EXEMPTION. (a) A school district is entitled to reimbursement from the fund for lost ad valorem tax revenue resulting from the \$20,000 residence homestead exemption required by Section 1-b(g), Article VIII, Texas Constitution.

(b) The comptroller shall compute each school district's lost ad valorem tax revenue resulting from the exemption described by Subsection (a). The comptroller shall adopt rules under which a school district or appraisal district must report information relating to property values and tax rates necessary to allow the comptroller to make the computation.

Sec. 403.355. REIMBURSEMENT FOR PROPERTY TAX RATE RELIEF. (a) A school district is entitled to reimbursement from the fund for lost ad valorem tax revenue resulting from the \$0.20 per \$100 valuation reduction in the district's maintenance and operation tax rate required by Section 26.048, Tax Code, as added by _____, B. No. _____, Acts of the 75th Legislature, Regular Session, 1997.

(b) Except as provided by Subsection (c), the amount of reimbursement under this section is computed by dividing the district's taxable value of property for the tax year by 100 and multiplying the resulting quotient by 20 cents.

(c) For purposes of Subsection (b), the reimbursement for a district with a wealth per student equal to or greater than the equalized wealth level is based on the taxable value of property the commissioner of education considers that the district retains as a result of actions taken under Chapter 41, Education Code. In this subsection, "equalized wealth level" has the meaning assigned by Section 41.001, Education Code.

(d) This section takes effect January 1, 1998, and applies only to the 1998 and subsequent tax years. This subsection expires January 2, 1998.

Sec. 403.356. PAYMENT OF REIMBURSEMENTS. (a) The comptroller shall pay a reimbursement under Section 403.354 or 403.355 not later than January 31 of the school year for which the reimbursement is made.

(b) In connection with the payment of reimbursements under this subchapter, the comptroller may audit the records of a school district and may adjust a payment to a school district under this subchapter, Chapter 41 or 42, Education Code, or other law if the district has received an amount under Subsection (a) that is less than or greater than the reimbursement to which the district is entitled.

SECTION 1.03. Effective January 1, 1998, Section 403.354, Government Code, as added by Section 1.02 of this Act, is amended to read as follows:

Sec. 403.354. REIMBURSEMENT FOR ADDITIONAL EXEMPTIONS AND LIMITATIONS. (a) A school district is entitled to reimbursement from the fund for lost ad valorem tax revenue resulting from:

(1) the \$20,000 residence homestead exemption required by Section 1-b(g), Article VIII, Texas Constitution;

(2) the tax freeze limitation required by Section 1-b(d), Article VIII, Texas Constitution, but only to the extent of the increase in that limitation under Section 1-b(g) of that article; and

(3) the business inventory exemption required by Section 11.25, Tax Code.

(b) The comptroller shall compute each school district's lost ad valorem tax revenue resulting from the exemptions and limitation described by Subsection (a). The comptroller shall adopt rules under which a school district or appraisal district must report information relating to property values, tax rates, and taxpayer eligibility necessary to allow the comptroller to make the computation.

SECTION 1.04. Section 21.402(b), Education Code, is amended to read as follows:

(b) Not later than June 1 of each year, the commissioner shall determine the amount appropriated for purposes of Chapter 42 for the state fiscal year beginning September 1. The commissioner shall exclude from the determination:

(1) amounts designated solely for use in connection with school facilities or for payment of principal of and interest on bonds; [and]

(2) local funds received under Subchapter D, Chapter 41; and

(3) amounts received by school districts from the Texas School Trust Fund under Subchapter N, Chapter 403, Government Code.

SECTION 1.05. Section 29.008(b), Education Code, is amended to read as follows:

(b) Except as provided by Subsection (c), costs of an approved contract for residential placement may be paid from a combination of federal, state, and local funds. The local share of the total contract cost for each student is that portion of the local tax effort that exceeds the district's local fund assignment under Section 42.252, divided by the average daily attendance in the district. If the contract involves a private facility, the state share of the total contract cost is that amount remaining after subtracting the local share. If the contract involves a public facility, the state share is that amount remaining after subtracting the local share from the portion of the contract that involves the costs of instructional and related services. For purposes of this subsection, "local tax effort" means the total amount of money generated by taxes imposed for debt service and maintenance and operation plus any amounts received from the Texas School Trust Fund under Subchapter N, Chapter 403, Government Code.

SECTION 1.06. Section 41.002(f), Education Code, is amended to read as follows:

(f) For purposes of Subsections (d) and (e), a school district's effective tax rate is determined by dividing the total amount of taxes collected by the district for the applicable school year plus any amounts received from the Texas School Trust Fund under Section 403.354, Government Code, by the quotient of the district's taxable value of property, as determined under Subchapter M, Chapter 403, Government Code, divided by 100. This subsection expires September 1, 1998.

SECTION 1.07. Section 41.093, Education Code, is amended to read as follows:

Sec. 41.093. COST. (a) The cost of each credit is an amount equal to the greater of:

(1) the amount of the district's total tax revenue per student in weighted average daily attendance for the school year for which the contract is executed; or

(2) the amount of the statewide district average of total tax revenue per student in weighted average daily attendance for the school year preceding the school year for which the contract is executed.

(b) For purposes of this section, total tax revenue includes amounts received from the Texas School Trust Fund under Section 403.354, Government Code.

SECTION 1.08. Section 41.097(a), Education Code, is amended to read as follows:

(a) The total amount required under Section 41.093 for a district to purchase attendance credits under this subchapter for any school year is reduced by an amount equal to the product of the district's costs under Section 6.06, Tax Code, for the central appraisal district in which it participates multiplied by a percentage that is computed by dividing the total amount required under Section 41.093 by the total amount of taxes imposed in the district for that year plus any amounts received from the Texas School Trust Fund under Section 403.354, Government Code.

SECTION 1.09. Section 42.251(b), Education Code, is amended to read as follows:

(b) The program shall be financed by:

(1) ad valorem tax revenue generated by an equalized uniform school district effort;

(2) ad valorem tax revenue generated by local school district effort in excess of the equalized uniform school district effort;

(3) state available school funds distributed in accordance with law; ~~[and]~~

(4) amounts distributed from the Texas School Trust Fund under Subchapter N, Chapter 403, Government Code; and

(5) state funds appropriated for the purposes of public school education and allocated to each district in an amount sufficient to finance the cost of each district's Foundation School Program not covered by other funds specified in this subsection.

SECTION 1.10. Section 42.252(d), Education Code, is amended to read as follows:

(d) A school district must raise its total local share of the Foundation School Program to be eligible to receive foundation school fund payments. For purposes of this chapter, the commissioner shall also consider amounts received from the Texas School Trust Fund under Subchapter N, Chapter 403, Government Code, as money raised by a district to meet its local share.

SECTION 1.11. Section 42.302(b), Education Code, is amended to read as follows:

(b) In computing the district enrichment and facilities tax rate of a school district, the commissioner shall add amounts received from the Texas School Trust Fund under Subchapter N, Chapter 403, Government Code, to the total amount of taxes collected by the district. The [the] total amount of taxes collected by the school district does not include the amount of:

(1) the district's local fund assignment under Section 42.252; or

(2) taxes collected to pay the local share of the cost of an instructional facility for which the district receives state assistance under Subchapter H.

SECTION 1.12. Section 42.304, Education Code, is amended to read as follows:

Sec. 42.304. COMPUTATION OF AID FOR DISTRICT ON MILITARY RESERVATION OR AT STATE SCHOOL. State assistance under this subchapter for a school district located on a federal military installation or at Moody State School is computed using the average effective tax rate computed as provided by Section 42.401(1) and property value per student of school districts in the county, as determined by the commissioner.

SECTION 1.13. Section 42.401(1), Education Code, is amended to read as follows:

(1) "Effective tax rate" means a tax rate that is determined by adding [dividing] the amount of taxes collected by a school district and any amounts received from the Texas School Trust Fund under Subchapter N, Chapter 403, Government Code, and dividing that total by the quotient of the district's taxable value of property, as determined under Subchapter M, Chapter 403, Government Code, divided by 100.

SECTION 1.14. (a) Section 403.302(d), Government Code, is amended to read as follows:

(d) For the purposes of this section, "taxable value" means market value less:

(1) the total dollar amount of any exemptions of part but not all of the value of taxable property required by the constitution or a statute that a district lawfully granted in the year that is the subject of the study, other than the \$20,000 residence homestead exemption required by Section 1-b(g), Article VIII, Texas Constitution;

(2) the total dollar amount of any exemptions granted before May 31, 1993, within a reinvestment zone under agreements authorized by Chapter 312, Tax Code;

(3) the total dollar amount of any captured appraised value of property that is located in a reinvestment zone and that is eligible for tax increment financing under Chapter 311, Tax Code;

(4) the total dollar amount of any exemptions granted under Section 11.251, Tax Code;

(5) the difference between the market value and the productivity value of land that qualifies for appraisal on the basis of its productive capacity, except that the productivity value may not exceed the fair market value of the land;

(6) the portion of the appraised value of residence homesteads of the elderly on which school district taxes are not imposed in the year that is the subject of the study, calculated as if the residence homesteads were appraised at the full value required by law;

(7) a portion of the market value of property not otherwise fully taxable by the district at market value because of action required by statute or the constitution of this state that, if the tax rate adopted by the district is applied to it, produces an amount equal to the difference between the tax that the district would have imposed on the property if the property were fully taxable at market value and the tax that the district is actually authorized to impose on the property; and

(8) the market value of all tangible personal property, other than manufactured homes, owned by a family or individual and not held or used for the production of income.

(b) This section applies only to the computation of school district property values for the 1997 tax year.

SECTION 1.15. (a) Effective January 1, 1998, Section 403.302(d), Government Code, is amended to read as follows:

(d) For the purposes of this section, "taxable value" means market value less:

(1) the total dollar amount of any exemptions of part but not all of the value of taxable property required by the constitution or a statute that a district lawfully granted in the year that is the subject of the study, other than:
(A) the \$20,000 residence homestead exemption required by Section 1-b(g), Article VIII, Texas Constitution; and

(B) the business inventory exemption required by Section 11.25, Tax Code;

(2) the total dollar amount of any exemptions granted before May 31,

1993, within a reinvestment zone under agreements authorized by Chapter 312, Tax Code;

(3) the total dollar amount of any captured appraised value of property that is located in a reinvestment zone and that is eligible for tax increment financing under Chapter 311, Tax Code;

(4) the total dollar amount of any exemptions granted under Section 11.251, Tax Code;

(5) the difference between the market value and the productivity value of land that qualifies for appraisal on the basis of its productive capacity, except that the productivity value may not exceed the fair market value of the land;

(6) the portion of the appraised value of residence homesteads of the elderly on which school district taxes are not imposed in the year that is the subject of the study, because of the tax freeze limitation required by Section 1-b(d), Article VIII, Texas Constitution, other than that portion of that limitation required by Section 1-b(g) of that article, calculated as if the residence homesteads were appraised at the full value required by law;

(7) a portion of the market value of property not otherwise fully taxable by the district at market value because of action required by statute or the constitution of this state that, if the tax rate adopted by the district is applied to it, produces an amount equal to the difference between the tax that the district would have imposed on the property if the property were fully taxable at market value and the tax that the district is actually authorized to impose on the property; and

(8) the market value of all tangible personal property, other than manufactured homes, owned by a family or individual and not held or used for the production of income.

(b) This section applies only to the computation of school district property values for the 1998 and later tax years.

SECTION 1.16. Section 825.405(h), Government Code, is amended to read as follows:

(h) This section does not apply to state contributions for members employed by a school district in a school year if the district's effective tax rate for maintenance and operation revenues for the tax year that ended in the preceding school year equals or exceeds 125 percent of the statewide average effective tax rate for school district maintenance and operation revenues for that tax year. For a tax year, the statewide average effective tax rate for school district maintenance and operation revenues is the tax rate that, if applied to the statewide total appraised value of taxable property for every school district in the state determined under Section 403.302, would produce an amount equal to the statewide total amount of maintenance and operation taxes imposed in the tax year for every school district in the state. For purposes of this section, the statewide total amount of maintenance and operations taxes does not include amounts received by school districts from the Texas School Trust Fund under Subchapter N, Chapter 403.

SECTION 1.17. Section 403.121, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The comptroller shall include in the reports, estimates, and certifications of available funds the estimated amount of transfers that may be available for appropriation by the legislature under Section 5-a, Article VII, Texas Constitution.

SECTION 1.18. Except as otherwise provided by this article, this article takes effect on the effective date of this Act.

ARTICLE 2. PROPERTY TAXATION

SECTION 2.01. Section 1.04, Tax Code, is amended by amending Subdivision (10) and adding Subdivision (20) to read as follows:

(10) "Taxable value" means the amount determined by deducting from appraised ~~[assessed]~~ value the amount of any applicable partial exemption.

(20) "Maintenance and operations" means any lawful purpose other than debt service for which a taxing unit may spend property tax revenues.

SECTION 2.02. Section 11.13, Tax Code, is amended by amending Subsection (b) and adding Subsection (s) to read as follows:

(b) An adult is entitled to an exemption from taxation by a school district of \$5,000 of the appraised value of his residence homestead. An adult is also entitled to exemption from taxation by a school district for maintenance and operations of \$20,000 of the appraised value of his residence homestead.

(s) If a school district has adopted an exemption from ad valorem taxes for elementary and secondary public school purposes on homesteads that the district by law may adopt by its own action, and that exemption is in effect on the date on which the constitutional amendment proposed by J.R. No. _____, 75th Legislature, Regular Session, takes effect, the governing body of the school district may not reduce the amount of or repeal that tax exemption before the second anniversary of the date on which that constitutional amendment takes effect. On or after the second anniversary of the date on which that constitutional amendment takes effect, the governing body of the school district may not reduce the amount of or repeal that tax exemption unless the reduction or repeal is approved by a vote of not less than two-thirds of the total members of its governing body.

SECTION 2.03. Subchapter B, Chapter 11, Tax Code, is amended by adding Section 11.25 to read as follows:

Sec. 11.25. TANGIBLE PERSONAL PROPERTY HELD AS INVENTORY. (a) This section applies only to ad valorem taxes imposed by a school district on tangible personal property for maintenance and operations of the district.

(b) A person is entitled to an exemption from taxation of the appraised value of the person's property that consists of property held for sale or consumption as inventory.

(c) A person that receives an exemption on tangible personal property held for sale or consumption as inventory under Section 11.145 or 11.251 is not entitled to an exemption on that property under Subsection (b).

(d) In this section:

(1) "Inventory" includes goods held for sale, raw materials, goods in process, finished goods, supplies, consigned goods, bill and hold goods, floor-planned goods, and in-transit goods. Except as provided by this section, each of those terms has the meaning assigned that term according to generally accepted principles of personal property appraisal.

(2) "School district" means a political subdivision of this state that is organized to provide general elementary and secondary public education and authorized to impose ad valorem taxes. The term does not include:

(A) a junior college district;
(B) a political subdivision organized to provide special education services; or
(C) an entity operating under former Chapter 25, 27, or 28, Education Code, as those chapters existed on May 1, 1995, as permitted by Section 11.301, Education Code.

(3) "Supplies" means stocks of goods intended to be consumed in a manufacturing process.

SECTION 2.04. (a) Effective January 1, 1998, Section 11.26(a), Tax Code, is amended to read as follows:

(a) The tax officials shall appraise the property to which this section applies and calculate taxes as on other property, but if the tax so calculated exceeds the limitation imposed by this section, the tax imposed is the amount of the tax as limited by this subsection, except [Except] as provided by Subsection (b). A [of this section, a] school district may not increase the total annual amount of ad valorem tax it imposes on the residence homestead of an individual 65 years or older above the amount of the tax it imposed in the first tax year the individual qualified that residence homestead for the exemption provided by Section 11.13(c) if that tax year is the 1998 tax year or a later tax year. If the first tax year the individual qualified that residence homestead for the exemption provided by Section 11.13(c) was a tax year before the 1997 tax year, the tax limitation is the amount of tax the school district imposed for the 1996 tax year less an amount equal to the amount determined by multiplying \$20,000 times the tax rate for maintenance and operations of the school district for the 1997 tax year plus any 1997 tax attributable to improvements made in 1996, other than improvements made to comply with governmental regulations or repairs. If the first tax year the individual qualified that residence homestead for the exemption provided by Section 11.13(c) is the 1997 tax year, the tax limitation is the amount of tax the school district imposed for the 1997 tax year less an amount equal to the amount determined by multiplying \$20,000 times the tax rate for maintenance and operations of the school district for the 1998 tax year plus:

(1) any 1998 tax attributable to improvements made in 1997, other than improvements made to comply with governmental regulations or repairs; and

(2) an amount equal to the amount determined by multiplying \$20,000 times the tax rate for maintenance and operations of the school district for the 1997 tax year. [Subsection (c) of Section 11.13 of this code. The tax officials shall continue to appraise the property and to calculate taxes as on other property, but if the tax so calculated exceeds the limitation imposed by this section, the tax imposed is the tax imposed in the first year the individual qualified the residence homestead for the exemption:]

(b) Effective beginning with the 1997 tax year, Section 11.26(e), Tax Code, is amended to read as follows:

(e) For each school district in an appraisal district, the chief appraiser shall determine the portion of the appraised value of residence homesteads of the elderly on which school district taxes are not imposed in a tax year because of the limitation on tax increases imposed by this section. That portion is calculated by determining the taxable values [value] that, if multiplied by the

applicable tax rate for debt or tax rate for maintenance and operations adopted by the school district for the tax year and the product of those computations added together, would produce an amount equal to the amount of tax that would have been imposed by the school district on residence homesteads of the elderly if the limitation on tax increases imposed by this section were not in effect, but that was not imposed because of that limitation. The chief appraiser shall determine those [that] taxable values [value] and certify them [it] to the comptroller as soon as practicable for each tax year.

SECTION 2.05. Section 25.19(b), Tax Code, is amended to read as follows:

(b) The chief appraiser shall separate real from personal property and include in the notice for each:

- (1) a list of the taxing units in which the property is taxable;
- (2) the appraised value of the property in the preceding year;
- (3) each [the assessed and] taxable value of the property in the preceding year for each taxing unit taxing the property;
- (4) the appraised value of the property for the current year and the kind and amount of each partial exemption, if any, approved for the current year;

(5) if the appraised value is greater than it was in the preceding year:

(A) the effective tax rate or rates that would be announced pursuant to Chapter 26 [Section 26.04 of this code] if the total values being submitted to the appraisal review board were to be approved by the board with an explanation that that rate or rates would raise the same amount of revenue from property taxed in the preceding year as the unit raised for those purposes in the preceding year;

(B) the amount of tax that would be imposed on the property on the basis of the rate or rates described by Paragraph (A) [of this subdivision]; and

(C) a statement that the governing body of the unit may not adopt a rate that will increase tax revenues for operating purposes from properties taxed in the preceding year without publishing notice in a newspaper that it is considering a tax increase and holding a hearing for taxpayers to discuss the tax increase;

(6) in italic typeface, the following statement: "The Texas Legislature does not set the amount of your local taxes. Your property tax burden is decided by your locally elected officials, and all inquiries concerning your taxes should be directed to those officials";

(7) a brief explanation of the time and procedure for protesting the value;

(8) the date and place the appraisal review board will begin hearing protests; and

(9) a brief explanation that:

(A) the governing body of each taxing unit decides whether or not taxes on the property will increase and the appraisal district only determines the value of the property; and

(B) a taxpayer who objects to increasing taxes and government expenditures should complain to the governing bodies of the taxing

units and only complaints about value should be presented to the appraisal office and the appraisal review board.

SECTION 2.06. Section 25.24, Tax Code, is amended to read as follows:

Sec. 25.24. APPRAISAL ROLL. The appraisal records, as changed by order of the appraisal review board and approved by that board, constitute the appraisal roll for the district. The appraisal roll for the district for the purpose of a school district includes for each property two values: a value for the levy of district maintenance and operations taxes and a value for the levy of debt service taxes.

SECTION 2.07. Sections 26.04(a) and (b), Tax Code, are amended to read as follows:

(a) On receipt of the appraisal roll, the assessor for a taxing unit shall determine the total appraised value[~~, the total assessed value,~~] and the total taxable value of property taxable by the unit and for a school district the total taxable value for each tax rate imposed by the district. He shall also determine, using information provided by the appraisal office, the appraised, assessed, and taxable values [~~value~~] of new property.

(b) The assessor shall submit the appraisal roll for the unit showing the total appraised, assessed, and taxable values of all property and the total taxable values [~~value~~] of new property to the governing body of the unit by August 1 or as soon thereafter as practicable. By August 1 or as soon thereafter as practicable, the taxing unit's collector shall certify an estimate of the collection rate for the current year to the governing body. If the collector certified an anticipated collection rate in the preceding year and the actual collection rate in that year exceeded the anticipated rate, the collector shall also certify the amount of debt taxes collected in excess of the anticipated amount in the preceding year.

SECTION 2.08. Chapter 26, Tax Code, is amended by adding Section 26.046 to read as follows:

Sec. 26.046. EFFECTIVE TAX RATES: SCHOOL DISTRICTS. (a) Notwithstanding Section 26.04, the officer or employee designated under that section to make the calculations for a school district shall determine an effective tax rate for the school district for maintenance and operations and an effective tax rate for the school district for debt service. The effective tax rates shall be calculated in the manner provided by Section 26.04, except as provided by this section. The effective tax rate for maintenance and operations shall be calculated on the value of property on the tax roll for maintenance and operations taxation, and the effective tax rate for debt service taxation shall be calculated on the value of property on the tax roll for debt service taxation.

(b) In calculating the effective tax rates for the school district under Subsection (a), the designated officer or employee shall:

(1) include in last year's levy only ad valorem taxes actually generated by the district in the preceding year; and

(2) exclude from last year's levy any state revenue received by the district in that year, including revenue received from the Texas School Trust Fund.

(c) The designated officer or employee shall adjust the effective tax rate for maintenance and operations calculated under Subsection (a) by adding or

subtracting a rate, that if applied to the current value for the levy of district maintenance and operations taxes for the district would impose maintenance and operations taxes in an amount that, when added or subtracted, as applicable, to the sum of the amount of taxes that would be imposed by the effective tax rate for maintenance and operations calculated under Subsection (a) and the amount of state funds to be received by the district under the Foundation School Program for the school year that begins in the current tax year, including the amount of any state funds projected to be received by the district under Section 42.302, Education Code, and that under law may be used for maintenance and operations purposes, would provide the same amount of those state funds and district maintenance and operations taxes per student in weighted average daily attendance for the school year that begins in the current tax year that was available to the district for the preceding school year.

SECTION 2.09. Chapter 26, Tax Code, is amended by adding Sections 26.047 and 26.048 to read as follows:

Sec. 26.047. EFFECTIVE MAINTENANCE AND OPERATIONS RATE FOR 1997 SCHOOL TAXES. (a) For the 1997 tax year, the effective maintenance and operations rate of a school district is calculated by subtracting from the effective tax rate for maintenance and operations calculated under Section 26.046 an amount equal to the rate that, if applied to current total value, would impose taxes in an amount equal to the 1997 tax year revenue not collected because of the tax exemption provided by Section 1-b(g), Article VIII, Texas Constitution.

(b) This section expires December 31, 1998.

Sec. 26.048. EFFECTIVE MAINTENANCE AND OPERATIONS RATE FOR 1998 SCHOOL TAXES. (a) Except as provided by Subsection (b), for the 1998 tax year, the effective maintenance and operations rate of a school district is computed by subtracting from the effective tax rate for maintenance and operations computed under Section 26.046 an amount equal to the rate that, if applied to current total value, would impose taxes in an amount equal to the sum of:

(1) \$0.20 per \$100 valuation;

(2) any 1998 tax year revenue not collected because of the business inventory tax exemption provided by Section 11.25, Tax Code; and

(3) the rate that, if applied to current total value, would impose taxes in an amount equal to the 1998 tax year revenue not collected because of the tax limitation provided by Section 1-b(g), Article VIII, Texas Constitution.

(b) The rate specified by Subsection (a)(1) is not subtracted from the effective tax rate for maintenance and operations computed under Section 26.046 if the school district is:

(1) a political subdivision organized primarily to provide special education services; or

(2) an entity operating under former Chapter 17, 18, 25, 26, 27, or 28, Education Code, as those chapters existed on May 1, 1995, as permitted by Section 11.301, Education Code.

(c) This section expires December 31, 1999.

SECTION 2.10. Sections 26.05(a) and (d), Tax Code, are amended to read as follows:

(a) Except as provided by Subsection (c), the governing body of each taxing unit before September 1 or as soon thereafter as practicable shall adopt a tax rate for the current tax year and shall notify the assessor for the unit of the rate adopted. The tax rate consists of two components, each of which must be approved separately. The components are:

(1) the rate that, if applied to the total taxable value or for a school district the total taxable value for debt taxation, will impose the total amount published under Section 26.04(e)(3)(C) ~~[of this code]~~, less any amount of additional sales and use tax revenue that will be used to pay debt service; and

(2) the rate that, if applied to the total taxable value or for a school district the total taxable value for maintenance and operations taxation, will impose the amount of taxes needed to fund maintenance and operation expenditures of the unit for the next year.

(d) The governing body of a taxing unit other than a school district may not adopt a tax rate that exceeds the lower of the rollback tax rate or 103 percent of the effective tax rate calculated as provided by Section 26.04 ~~[of this code]~~ until it has held a public hearing on the proposed increase and has otherwise complied with Section 26.06 ~~[of this code]~~. The governing body of a school district may not adopt a tax rate for maintenance and operations that exceeds the effective tax rate for maintenance and operations calculated as provided by Section 26.046 until it has held a public hearing on the proposed increase and has otherwise complied with Section 26.06. The governing body of a taxing unit other than a school district shall reduce a tax rate set under a [by] law other than this title or by vote of the electorate to the lower of the rollback tax rate or the percentage [103 percent] of the effective tax rate provided by this subsection applicable to the taxing unit and may not adopt a higher rate unless it first complies with Section 26.06 ~~[of this code]~~.

SECTION 2.11. Chapter 26, Tax Code, is amended by adding Section 26.065 to read as follows:

Sec. 26.065. ADOPTION OF SCHOOL DISTRICT MAINTENANCE AND OPERATIONS TAX RATE IN EXCESS OF EFFECTIVE RATE FOR MAINTENANCE AND OPERATIONS; ELECTION TO LIMIT RATE. (a) For a year that begins on or after January 1, 1997, the governing body of a school district may not adopt a maintenance and operations tax rate that exceeds the effective maintenance and operations tax rate calculated under Section 26.046 for the current year unless the rate is approved by a vote of not less than two-thirds of the total members of the governing body.

(b) If the governing body of the school district adopts a maintenance and operations tax rate that exceeds the effective tax rate for maintenance and operations calculated under Section 26.046 by \$0.02 per \$100 taxable value, the registered voters of the district at an election held for that purpose must determine whether to limit the maintenance and operations tax rate for the current year to a rate equal to the sum of the effective tax rate for maintenance and operations calculated under Section 26.046 for the current year plus \$0.02 per \$100 taxable value, or a lower rate adopted by the governing body after the election.

(c) The governing body shall order that an election be held in the school district on a date not less than 30 or more than 90 days after the date on which

the governing body adopts the tax rate that triggers the election. Section 41.001, Election Code, does not apply to the election unless a date specified by that section falls within the time permitted by this section.

(d) At the election, the ballot shall be prepared to permit voting for or against the proposition: "Limiting the maintenance and operations tax rate in _____ (name of district) for the current year from _____ (maintenance and operations tax rate adopted by governing body) as proposed by the school district to _____ (rate equal to sum of effective tax rate for maintenance and operations calculated under Section 26.046, Tax Code, plus \$0.02 per \$100 taxable value)."

(e) If a majority of the votes cast in the election favor the proposition, the governing body may not adopt a maintenance and operations tax rate for the current year that exceeds the effective tax rate for maintenance and operations calculated under Section 26.046 plus \$0.02 per \$100 taxable value.

(f) For a tax year beginning on or after January 1, 1999, the amount by which the tax rate for maintenance and operations adopted for the current tax year exceeds the effective tax rate for maintenance and operations calculated under Section 26.046 for that year may not exceed the amount that, when added to the amount by which the adopted maintenance and operations tax rate for each of the two preceding tax years exceeds the applicable effective tax rate for maintenance and operations calculated under Section 26.046 for each of those years, equals \$0.04 per \$100 taxable value unless an election is held under Subsection (g) at which the registered voters of the district do not limit the maintenance and operations tax rate approved by the governing body.

(g) An election held under Subsection (f) shall be conducted in the manner provided by this section for an election under Subsection (b). The ballot shall be prepared to permit voting for or against the proposition: "Limiting the maintenance and operations tax rate in _____ (name of district) for the current year from _____ (maintenance and operations tax rate adopted by governing body) as proposed by the school district to _____ (rate calculated under Section 26.065(f), Tax Code, in excess of which an adopted maintenance and operations tax rate triggers an election under that section)."

(h) If a majority of the votes cast in the election favor the proposition, the governing body may not adopt a maintenance and operations tax rate for the current year that exceeds the limited rate approved by the voters.

(i) If an election is required under Subsection (f) in any tax year, an election under Subsections (b)-(e) is not required to be held in that tax year. If an election under Subsections (b)-(e) was held at which the voters did not approve the proposition to limit the district's tax rate in one of the two preceding tax years, an election under Subsection (f) is not required in the current year.

(j) When increased expenditure of money by a school district is necessary to respond to a disaster, including a tornado, hurricane, flood, or other calamity, but not including a drought, that has impacted a school district and the governor has requested federal disaster assistance for the area in which the school district is located, an election is not required under this section to limit the maintenance and operations tax rate the governing body may adopt for the year following the year in which the disaster occurs.

(k) For purposes of this section, local tax funds dedicated to a junior college district under Section 45.105(e), Education Code, shall be eliminated from the calculation of the maintenance and operations tax rate adopted by the governing body of the school district. However, the funds dedicated to the junior college district are subject to Section 26.085.

(l) In a school district that received distributions from an equalization tax imposed under former Chapter 18, Education Code, the effective rate of that tax as of the date of the county unit system's abolition is added to the district's effective tax rate for maintenance and operations for purposes of this section.

(m) For purposes of this section, increases in taxable values and tax levies occurring within a reinvestment zone under the provisions of Chapter 311 (Tax Increment Financing Act), in which the district is a participant, shall be eliminated from the calculation of the effective tax rates adopted by the governing body of the school district.

(n) For purposes of the 1997 and 1998 tax years, the effective tax rate for maintenance and operations for a school district is the rate calculated under Section 26.047 or 26.048, as applicable. This subsection expires January 1, 2000.

SECTION 2.12. Section 26.08, Tax Code, is repealed.

SECTION 2.13. Section 26.09(c), Tax Code, is amended to read as follows:

(c) The tax is calculated by:

(1) subtracting from the appraised value of a property as shown on the appraisal roll for the unit the amount of any partial exemption allowed the property owner that applies to appraised value to determine taxable ~~[net appraised]~~ value; and

(2) ~~[multiplying the net appraised value by the assessment ratio to determine assessed value;~~

~~[(3) subtracting from the assessed value the amount of any partial exemption allowed the property owner to determine taxable value; and~~

~~[(4)] multiplying the taxable value by the tax rate, or for a school district as defined by Section 11.13(m)(2), multiplying the taxable value for maintenance and operations taxation by the maintenance and operations tax rate, multiplying the taxable value for debt service taxation by the debt service tax rate, and adding the products.~~

SECTION 2.14. Section 31.01, Tax Code, is amended by amending Subsection (c) and adding Subsection (k) to read as follows:

(c) The tax bill or a separate statement accompanying the tax bill shall:

(1) identify the property subject to the tax;

(2) state the appraised value~~[-assessed value,]~~ and taxable value of the property for each type of tax levy the taxing unit imposes on a different value;

(3) if the property is land appraised as provided by Subchapter C, D, or E, Chapter 23 ~~[of this code]~~, state the market value and the taxable value for purposes of deferred or additional taxation as provided by Section 23.46, 23.55, or 23.76, as applicable~~[-of this code]~~;

(4) ~~[state the assessment ratio for the unit;~~

~~[(5)] state the type and amount of any partial exemption applicable to the property[-indicating whether it applies to appraised or assessed value];~~

(5) ~~[(6)]~~ state the total tax rate or rates for the unit;

(6) [(7)] state the amount of tax due, the due date, and the delinquency date;

(7) [(8)] explain the payment option and discounts provided by Sections 31.03 and 31.05 ~~[of this code]~~, if available to the unit's taxpayers, and state the date on which each of the discount periods provided by Section 31.05 concludes, if the discounts are available;

(8) [(9)] state the rates of penalty and interest imposed for delinquent payment of the tax; and

(9) [(10)] include any other information required by the comptroller.

(k) In addition to the information specified by Subsection (c), a tax bill for school district taxes or the separate statement accompanying a tax bill for school district taxes shall include an explanation of the Property Tax Cut Act of 1997 and the effect on the school district's tax rates for the year caused by that Act. If a tax bill for school district taxes containing an explanation required by this subsection is mailed to a mortgagee of a property, the mortgagee shall mail a copy of the tax bill or accompanying statement containing the explanation to the owner of the property before the 31st day after the date the mortgagee receives the tax bill. This subsection expires January 1, 1999.

SECTION 2.15. (a) Except as otherwise provided by this article or Subsection (b) of this section, this article takes effect on the effective date of this Act and applies to ad valorem taxes imposed by a school district for and after the 1997 tax year.

(b) Section 2.03 of this article takes effect January 1, 1998, and applies only to ad valorem taxes imposed by a school district for a tax year that begins on or after that date.

ARTICLE 3. TEXAS BUSINESS TAX

SECTION 3.01. Subtitle F, Title 2, Tax Code, is amended by adding Chapter 172 to read as follows:

CHAPTER 172. BUSINESS TAX

SUBCHAPTER A. DEFINITIONS

Sec. 172.001. AFFILIATED GROUP. "Affiliated group" means an affiliated group of corporations as defined in Section 1504, Internal Revenue Code.

Sec. 172.002. BUSINESS ACTIVITY. (a) "Business activity" means an activity that:

(1) is:

(A) a transfer of legal or equitable ownership of or the right of possession of property; or

(B) the performance of services; and

(2) occurs in this state, without regard to whether the activity is in interstate or foreign commerce.

(b) The term does not include:

(1) an activity by an individual that is not for economic gain, benefit, or advantage to the individual or to others;

(2) a service rendered by an employee to an employer;

(3) a service as a director of a corporation;

(4) income derived from individual investment; or

(5) a casual transaction.

(c) A transaction that otherwise is excluded under Subsection (b), but that is made or engaged in by a person and that is incidental to the person's regular business activity, is a business activity.

(d) For purposes of Subsection (a), a business activity occurs in this state if the activity has a sufficient nexus, to the limits of the United States Constitution and the federal law adopted under the United States Constitution, to this state.

Sec. 172.003. BUSINESS ENTITY. "Business entity" means a corporation, limited liability company, partnership, limited partnership, limited liability partnership, banking corporation, savings and loan association, trust, estate, or sole proprietorship. The term includes any kind of business association, joint venture, or any other combination of entities or persons engaged in a business activity.

Sec. 172.004. CASUAL TRANSACTION. "Casual transaction" means a transaction made or engaged in other than in the ordinary course of repeated and successive transactions of a like character, except that a transaction made or engaged in by a person that is incidental to that person's regular business activity is considered to be a business activity.

Sec. 172.005. COMPENSATION. (a) "Compensation" means all wages, salaries, fees, bonuses, commissions, or other payments made in the taxable year on behalf of or for the benefit of employees, officers, or directors of a taxpayer and subject to or specifically exempt from withholding under Section 3401, Internal Revenue Code.

(b) The term includes the following payments determined on a cash or accrual system consistent with the taxpayer's method of accounting for federal income tax purposes:

- (1) payments to state and federal unemployment compensation funds;
- (2) under the Federal Insurance Contributions Act (Chapter 21, Title 26, Internal Revenue Code) and similar social insurance programs, payments, including self-insurance payments, for workers' compensation insurance;
- (3) payments to individuals not currently working;
- (4) payments to dependents and heirs of individuals because of current or former labor services rendered by those individuals;
- (5) payments to a pension, retirement, or profit-sharing plan; and
- (6) payments for insurance for which employees are the beneficiaries.

(c) For a partnership, the term includes net earnings of the partners from self-employment and does not include guaranteed payments to partners.

(d) The term does not include discounts on the price of the taxpayer's merchandise or services sold to the taxpayer's employees, officers, or directors that are not available to other customers or payments to an independent contractor.

Sec. 172.006. CORPORATION. "Corporation" includes:

- (1) a limited liability company as defined by the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes);
- (2) a state or federal savings and loan association;
- (3) a state or federal savings bank; and
- (4) a banking corporation.

Sec. 172.007. EMPLOYEE. (a) "Employee" means an employee as defined in Section 3401(c), Internal Revenue Code.

(b) A person from whom an employer is required to withhold for federal income tax purposes is presumed to be an employee.

Sec. 172.008. EMPLOYER. (a) "Employer" means an employer as defined in Section 3401(d), Internal Revenue Code.

(b) A person required to withhold for federal income tax purposes is presumed to be an employer.

Sec. 172.009. FEDERAL INCOME TAX TERMS. A term used in this chapter, and not defined differently, has the same meaning as the term when used in a comparable context in the Internal Revenue Code or other federal law relating to federal income taxes.

Sec. 172.010. FEDERAL TAXABLE INCOME. "Federal taxable income" means taxable income as defined in Section 63, Internal Revenue Code, increased by the amount, if any, of deductions taken under Section 172, Internal Revenue Code, and includes the income of an estate or trust.

Sec. 172.011. FINANCIAL INSTRUMENT. "Financial instrument" means any share of stock or other legal evidence of equity ownership in a corporation or other business entity, certificate of stock or interest in any corporation, stock derivative, note, bond, debenture, indebtedness derivative and evidence of indebtedness, including any evidence of an interest in or right to subscribe to or purchase any of these instruments.

Sec. 172.012. INDIVIDUAL INVESTMENT. "Individual investment" means investment by an individual:

(1) of funds owned by the individual solely for the benefit of the individual if the investment is not made in connection with another activity that is a business activity; or

(2) of funds owned by the individual's relative within the third degree of consanguinity or the second degree of affinity, as those relationships are described by Subchapter B, Chapter 573, Government Code, on behalf of and solely for the benefit of the owner of the funds if the investment is not made in connection with another activity that is a business activity.

Sec. 172.013. INTERNAL REVENUE CODE. "Internal Revenue Code" means the Internal Revenue Code of 1986 in effect on January 1, 1997.

Sec. 172.014. RENTAL. "Rental" includes a lease payment or other payment for the use of any property to which the taxpayer does not otherwise have legal or equitable title.

Sec. 172.015. SALE. "Sale" means a transaction from which the gross receipts constitute consideration:

(1) for the transfer of title to, or possession of, property:

(A) that is stock in trade;

(B) that is of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period; or

(C) that is held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business;

(2) for the performance of services that constitute business activities other than those included in Subdivision (1); or

(3) from any combination of gross receipts included in Subdivision (1) or (2).

Sec. 172.016. STATE. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or a political subdivision of any of those entities.

Sec. 172.017. TAX. "Tax" includes interest and penalties unless the intention to give it a more limited meaning is indicated by its context.

Sec. 172.018. TAXPAYER. "Taxpayer" means a business entity liable for a tax, interest, or penalty under this chapter.

Sec. 172.019. TAX YEAR. (a) "Tax year" means the calendar year or the fiscal year ending during the calendar year for which the tax base is computed under this chapter.

(b) If a return is made for a fractional part of a year, the term means the period for which the return is made.

(c) Except for the first return required by this chapter, a taxpayer's tax year is the same period as that covered by the taxpayer's federal income tax return.

[Sections 172.020-172.100 reserved for expansion]

SUBCHAPTER B. IMPOSITION OF TAX

Sec. 172.101. TAX IMPOSED. There is imposed a tax on every business entity having a business activity in this state that is allocated or apportioned to this state.

Sec. 172.102. TAX RATE. The tax imposed by this chapter is at the rate of 1.25 percent of the taxpayer's adjusted tax base.

Sec. 172.103. DETERMINATION OF TAX BASE. (a) A taxpayer determines the tax base by taking the amount of federal taxable income, before any of the adjustments provided by Section 172.104, even if zero or negative, and making the following adjustments:

(1) add, to the extent deducted in arriving at federal taxable income:

(A) all taxes on or measured by net income; and

(B) except as provided by Section 172.106 any deduction for depreciation, amortization, or immediate or accelerated write-off related to the cost of tangible assets;

(2) add compensation;

(3) deduct any capital loss not deducted in arriving at federal taxable income in the year the loss occurred; and

(4) to the extent included in computing federal taxable income, deduct:

(A) the dividends and net capital gains arising from the holding or disposition of a financial instrument of another entity that is subject to the taxes imposed by this chapter or that would be subject to the taxes imposed by this chapter if it had a nexus in this state; and

(B) the net income, not included in Paragraph (A), received from another entity that is not a corporation and that is subject to the taxes imposed by this chapter or that would be subject to the taxes imposed by this chapter if it had a nexus in this state.

(b) For purposes of Subsection (a), for a taxpayer that is a partnership, federal taxable income means the income of the partners reported, as required of the partnership by the Internal Revenue Service under the Internal Revenue Code, on Schedule K, Partners' Shares of Income, Credits, Deductions, etc., line 25a, of Form 1065.

(c) For purposes of Subsection (a), for a taxpayer that is a sole proprietorship, federal taxable income is the sum of:

(1) the income reported, as required of the sole proprietorship by the Internal Revenue Service under the Internal Revenue Code, on the following schedules of Form 1040:

(A) Schedule C, Profit or Loss From Business, line 31;

(B) Schedule E, Supplemental Income and Loss, line 26; or

(C) Schedule F, Profit or Loss From Farming, line 36; and

(2) the following income attributable as income to the sole proprietorship:

(A) taxable interest income;

(B) dividend income; and

(C) capital gains.

(d) The comptroller by rule shall update references in this section to schedules and forms of the Internal Revenue Service if changed by the Internal Revenue Service and shall adopt forms consistent with the change.

Sec. 172.104. DETERMINATION OF ADJUSTED TAX BASE. A taxpayer determines the adjusted tax base by making adjustments to the tax base as provided in Section 172.103 in the following order:

(1) deducting any income derived from a nonbusiness activity listed in Section 172.002(b) to the extent included in the tax base;

(2) making the adjustments relating to capital investment under Section 172.105;

(3) allocating and apportioning the tax base as provided in Subchapter D; and

(4) deducting the standard deduction allowed under Section 172.151.

Sec. 172.105. ADJUSTMENTS RELATING TO CAPITAL INVESTMENT. (a) In determining the adjusted tax base, a taxpayer shall make the adjustments relating to capital investment required by Section 172.104(2) as provided by this section.

(b) The taxpayer shall deduct the cost, including the cost of fabrication and installation, paid or accrued in the taxable year of tangible assets.

(c) The taxpayer shall add the gross proceeds or benefit derived from the sale or other disposition of tangible assets, less the gain.

(d) In this section, "tangible assets" means tangible assets of a type that are, or, under the Internal Revenue Code, will become, eligible for depreciation or amortization for federal income tax purposes.

Sec. 172.106. ADJUSTMENTS RELATING TO INVESTMENT IN ENTERPRISE ZONE. (a) A corporation that has been designated as an enterprise project as provided by Chapter 2303, Government Code, is not required to add any deduction for depreciation to its tax base as provided by Section 172.103(a)(1)(B) as provided by this section.

(b) The adjustment authorized by this section is limited to the depreciation related to capital equipment or other investment that qualifies for depreciation for federal income tax purposes and that is placed in service in the enterprise zone after designation as an enterprise project and after September 1, 1991.

(c) To qualify for the adjustment authorized by this section, an investment must be used in the normal course of business in the enterprise zone and must

not be removed from the enterprise zone, except for repair or maintenance. Qualifying use and presence in the zone must occur during the accounting year on which the report is based.

(d) Only qualified businesses that have been certified as eligible for an adjustment under this section by the Texas Department of Commerce to the comptroller and the Legislative Budget Board are entitled to the adjustment.

(e) In this section:

(1) "Enterprise project" means a person designated by the Texas Department of Commerce as an enterprise project under Chapter 2303, Government Code.

(2) "Enterprise zone" has the meaning assigned to that term by Section 2303.003, Government Code.

[Sections 172.107-172.150 reserved for expansion]

SUBCHAPTER C. DEDUCTIONS

Sec. 172.151. STANDARD DEDUCTION. (a) The standard deduction permitted for each tax year for each business entity or combined entity under Section 172.306 is \$500,000.

(b) For a taxpayer whose business activity is for a fractional part of a year, the deduction is prorated for the period of the taxpayer's business activity.

[Sections 172.152-172.200 reserved for expansion]

SUBCHAPTER D. ALLOCATION AND APPORTIONMENT OF TAX BASE

Sec. 172.201. BUSINESS ACTIVITIES CONFINED TO TEXAS. The entire tax base of a taxpayer whose business activity is confined solely to this state is allocated to this state except as provided by Sections 172.206 and 172.207.

Sec. 172.202. BUSINESS ACTIVITIES IN TEXAS AND ELSEWHERE. A taxpayer whose business activity is taxable both in and outside this state shall apportion the taxpayer's tax base as provided by this subchapter.

Sec. 172.203. TAXABLE IN ANOTHER STATE. For purposes of apportionment of the tax base from business activity under this subchapter, a taxpayer is taxable in another state if:

(1) in that state the taxpayer is subject to a business privilege tax, a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, or a tax of the type imposed by this chapter; or

(2) that state has jurisdiction to subject the taxpayer to one or more of the taxes without regard to whether the state does so.

Sec. 172.204. APPORTIONMENT FACTOR. All of the tax base is apportioned to this state by multiplying the tax base by the gross receipts factor.

Sec. 172.205. GROSS RECEIPTS FACTOR. The gross receipts factor is a fraction, the numerator of which is the total gross receipts of the taxpayer in this state during the tax year, and the denominator of which is the total gross receipts of the taxpayer during the tax year.

Sec. 172.206. NUMERATOR: GROSS RECEIPTS OF TAXPAYER IN THIS STATE. (a) The gross receipts of a taxpayer in this state is the sum of the taxpayer's receipts from:

(1) each sale of tangible personal property if the property is delivered

or shipped to a buyer in this state regardless of the FOB point or another condition of the sale, and each sale of tangible personal property shipped from this state to a purchaser in another state in which the seller is not subject to taxation;

(2) each service performed in this state;

(3) each rental of property situated in this state;

(4) each royalty for the use of a patent or copyright in this state; and

(5) other business done in this state.

(b) A taxpayer shall deduct from its gross receipts any amount to the extent included in Subsection (a) because of the application of Section 78 or Sections 951-964, Internal Revenue Code, and dividends received from a subsidiary, associate, or affiliated business group that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States.

(c) Interest and dividends received by a banking corporation or a savings and loan association are gross receipts of the banking corporation or savings and loan association from its business done in this state if the banking corporation or savings and loan association has its commercial domicile in this state.

Sec. 172.207. DENOMINATOR: TOTAL GROSS RECEIPTS OF TAXPAYER. (a) The total gross receipts of a taxpayer is the sum of the taxpayer's receipts from:

(1) each sale of the taxpayer's tangible personal property;

(2) each service, rental, or royalty; and

(3) other business.

(b) If a taxpayer sells an investment or capital asset, the taxpayer's gross receipts from its entire business include only the net gain from the sale.

(c) A taxpayer shall deduct from its gross receipts any amount to the extent included in Subsection (a) because of the application of Section 78 or Sections 951-964, Internal Revenue Code, and dividends received from a subsidiary, associate, or affiliated business group that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States.

[Sections 172.208-172.250 reserved for expansion]

SUBCHAPTER E. EXEMPTIONS

Sec. 172.251. APPLICATION FOR EXEMPTION. Except as otherwise provided, a taxpayer may apply for an exemption under this subchapter by filing with the comptroller, as provided by the rules of the comptroller, evidence of the taxpayer's qualifications for the exemption.

Sec. 172.252. EXEMPTION: GOVERNMENTAL ENTITIES. There are exempted from the taxes imposed by this chapter the United States, this state and other states, and agencies, political subdivisions, and enterprises of the United States, this state, and other states.

Sec. 172.253. EXEMPTION: INSURANCE COMPANIES. There is exempted from the taxes imposed by this chapter a corporation that is an insurance company, surety, guaranty, or fidelity company required to pay an annual tax measured by gross receipts.

Sec. 172.254. EXEMPTION: NONPROFIT CORPORATION EXEMPT

FROM FEDERAL INCOME TAX. (a) There are exempted from the taxes imposed by this chapter:

(1) subject to Subsection (b), a nonprofit corporation exempted from the federal income tax under Section 501(c)(3), (4), (5), (6), (7), (8), (10), or (19), Internal Revenue Code;

(2) a corporation exempted under Section 501(c)(2) or (25), Internal Revenue Code, if the corporation or corporations for which it holds title to property is either exempt from or not subject to the franchise tax;

(3) a corporation exempted from federal income tax under Section 501(c)(16), Internal Revenue Code; and

(4) a nonprofit corporation exempted from the federal income tax under Section 501(c)(3), Internal Revenue Code, that does not receive any payment for providing health care services to inpatients or outpatients from any source including a patient or person legally obligated to support the patient, third-party payors, Medicare, Medicaid, or any other state or local indigent health care program but not including charitable donations, legacies, bequests, or grants or payments for research.

(b) A nonprofit hospital qualifies under Subsection (a)(1) if the hospital provides charity care and community benefits in the following manner:

(1) charity care and government-sponsored indigent health care are provided at a level that is reasonable in relation to the community needs as determined through the community needs assessment, the available resources of the hospital or hospital system, and the tax-exempt benefits received by the hospital or hospital system;

(2) charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of the hospital's or hospital system's net patient revenue;

(3) charity care and government-sponsored indigent health care are provided in an amount equal to at least 100 percent of the hospital's or hospital system's tax-exempt benefits, excluding federal income tax;

(4) charity care and community benefits are provided in a combined amount equal to at least five percent of the hospital's or hospital system's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of net patient revenue;

(5) a nonprofit hospital that has been designated as a disproportionate share hospital under the state Medicaid program in the current year or in either of the previous two fiscal years is considered to have provided a reasonable amount of charity care and government-sponsored indigent health care and is considered in compliance with the standards provided by this subsection; or

(6) a hospital operated on a nonprofit basis that is located in a county with a population of less than 50,000 and in which the entire county or the population of the entire county has been designated as a health professionals shortage area is considered in compliance with the standards provided by this subsection.

(c) For purposes of Subsection (b), a hospital that satisfies Subsection (b)(1), (5), or (6) shall be excluded in determining a hospital system's compliance with the standards provided by Subsection (b)(2), (3), or (4). A

determination of the amount of community benefits and charity care and government-sponsored indigent health care provided by a hospital or hospital system and the hospital's or hospital system's compliance with the requirements of Section 311.045, Health and Safety Code, shall be based on the most recently completed and audited prior fiscal year of the hospital or hospital system. The providing of charity care and government-sponsored indigent health care in accordance with Subsection (b)(1) shall be guided by the prudent business judgment of the hospital, which will ultimately determine the appropriate level of charity care and government-sponsored indigent health care based on the community needs, the available resources of the hospital, the tax-exempt benefits received by the hospital, and other factors that may be unique to the hospital, such as the hospital's volume of Medicare and Medicaid patients. These criteria shall not be determinative factors but shall be guidelines contributing to the hospital's decision along with other factors that may be unique to the hospital. The formulas contained in Subsections (b)(2), (3), and (4) shall also not be considered determinative of a reasonable amount of charity care and government-sponsored indigent health care. The requirements of Subsection (b) shall not apply if a hospital or hospital system demonstrates that reductions in the amount of community benefits, charity care, and government-sponsored indigent health care are necessary to maintain financial reserves at a level required by a bond covenant, are necessary to prevent the hospital or hospital system from endangering its ability to continue operations, or are necessary because the hospital, as a result of a natural or other disaster, is required to substantially curtail its operations. In any fiscal year that a hospital or hospital system, through unintended miscalculation, fails to meet any of the standards in Subsection (b), the hospital or hospital system shall not lose its tax-exempt status without the opportunity to cure the miscalculation in the fiscal year following the fiscal year the failure is discovered by meeting one of the standards and providing an additional amount of charity care and government-sponsored indigent health care that is equal to the shortfall from the previous fiscal year. A hospital or hospital system may apply this provision only once every five years.

(d) A corporation is entitled to an exemption under this section based on the corporation's exemption from the federal income tax if the corporation files with the comptroller evidence establishing the corporation's exemption.

(e) A corporation's exemption under this section may be established by furnishing the comptroller with a copy of the Internal Revenue Service's letter of exemption issued to the corporation. The copy of the letter may be filed with the comptroller within 15 months after the day that is the last day of a calendar month and that is nearest to the date of the corporation's charter or certificate of authority.

(f) If the Internal Revenue Service has not timely issued to a corporation a letter of exemption, evidence establishing the corporation's exemption under this section is sufficient if the corporation files with the comptroller within the 15-month period established by Subsection (e) evidence that the corporation has applied in good faith for the federal tax exemption.

(g) An exemption established under Subsection (e) or (f) is to be recognized, after it is finally established, as of the date of the corporation's charter or certificate of authority.

(h) If a corporation timely files evidence with the comptroller under Subsection (f) that it has applied for a federal tax exemption and if the application is finally denied by the Internal Revenue Service, this chapter does not impose a penalty on the corporation from the date of its charter or certificate of authority to the date of the final denial.

(i) If a corporation's federal tax exemption is withdrawn by the Internal Revenue Service for failure of the corporation to qualify or maintain its qualification for the exemption, the corporation's exemption under this section ends on the effective date of that withdrawal by the Internal Revenue Service. The effective date of the withdrawal is considered the corporation's beginning date for purposes of this chapter.

(j) In this section, "charity care," "government-sponsored indigent health care," "health care organization," "hospital system," "net patient revenue," "nonprofit hospital," and "tax-exempt benefits" have the meanings assigned those terms in Sections 311.031 and 311.042, Health and Safety Code.

Sec. 172.255. EXEMPTION: NONPROFIT CORPORATION ORGANIZED TO PROVIDE WATER SUPPLY OR SEWER SERVICES. There is exempted from the taxes imposed by this chapter a nonprofit water supply or sewer service corporation organized on behalf of a municipality under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes).

Sec. 172.256. EXEMPTION: RAILWAY TERMINAL CORPORATION. A corporation organized as a railway terminal corporation and having no annual net income from its business is exempted from the tax under this chapter.

Sec. 172.257. EXEMPTION: OPEN-END INVESTMENT COMPANY. An open-end investment company, as defined by the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), that is subject to that Act and that is registered under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), is exempted from the tax under this chapter.

Sec. 172.258. EXEMPTION: BUSINESS ENTITY WITH BUSINESS INTEREST IN SOLAR ENERGY DEVICES. (a) A business entity engaged solely in the business of manufacturing, selling, or installing solar energy devices is exempted from the tax under this chapter.

(b) In this section, "solar energy device" means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power.

Sec. 172.259. EXEMPTION: NONPROFIT CORPORATION ORGANIZED TO PROMOTE COUNTY, CITY, OR ANOTHER AREA. A nonprofit corporation organized solely to promote the public interest of a county, city, town, or another area in the state is exempted from the tax under this chapter.

Sec. 172.260. EXEMPTION: NONPROFIT CORPORATION ORGANIZED FOR RELIGIOUS PURPOSES. A nonprofit corporation organized for the purpose of religious worship is exempted from the tax under this chapter.

Sec. 172.261. EXEMPTION: NONPROFIT CORPORATION ORGANIZED TO PROVIDE BURIAL PLACES. A nonprofit corporation organized to provide places of burial is exempted from the tax under this chapter.

Sec. 172.262. EXEMPTION: NONPROFIT CORPORATION ORGANIZED FOR AGRICULTURAL PURPOSES. A nonprofit corporation organized to hold agricultural fairs and encourage agricultural pursuits is exempted from the tax under this chapter.

Sec. 172.263. EXEMPTION: NONPROFIT CORPORATION ORGANIZED FOR EDUCATIONAL PURPOSES. A nonprofit corporation organized solely for educational purposes is exempted from the tax under this chapter.

Sec. 172.264. EXEMPTION: NONPROFIT CORPORATION ORGANIZED FOR PUBLIC CHARITY. A nonprofit corporation organized for purely public charity is exempted from the tax under this chapter.

Sec. 172.265. EXEMPTION: NONPROFIT CORPORATION ORGANIZED FOR CONSERVATION PURPOSES. A nonprofit corporation organized solely to educate the public about the protection and conservation of fish, game, other wildlife, grasslands, or forests is exempted from the tax under this chapter.

Sec. 172.266. EXEMPTION: NONPROFIT CORPORATION INVOLVED WITH CITY NATURAL GAS FACILITY. A nonprofit corporation organized to construct, acquire, own, lease, or operate a natural gas facility on behalf and for the benefit of a municipality or residents of a municipality is exempted from the tax under this chapter.

Sec. 172.267. EXEMPTION: NONPROFIT CORPORATION ORGANIZED TO PROVIDE CONVALESCENT HOMES FOR ELDERLY. A nonprofit corporation organized to provide a convalescent home or other housing for persons who are at least 62 years old or who are handicapped or disabled is exempted from the tax under this chapter, whether or not the corporation is organized for purely public charity.

Sec. 172.268. EXEMPTION: NONPROFIT CORPORATION ORGANIZED TO PROVIDE COOPERATIVE HOUSING. A nonprofit corporation engaged solely in the business of owning residential property for the purpose of providing cooperative housing for persons is exempted from the tax under this chapter.

Sec. 172.269. EXEMPTION: MARKETING ASSOCIATIONS. A marketing association incorporated under Chapter 52, Agriculture Code, is exempted from the tax under this chapter.

Sec. 172.270. EXEMPTION: LODGES. A lodge incorporated under Article 1399 et seq., Revised Statutes, is exempted from the tax under this chapter.

Sec. 172.271. EXEMPTION: FARMERS' COOPERATIVE SOCIETY. A farmers' cooperative society incorporated under Chapter 51, Agriculture Code, is exempted from the tax under this chapter.

Sec. 172.272. EXEMPTION: HOUSING FINANCE CORPORATION. A housing finance corporation incorporated under Chapter 394, Local Government Code, is exempted from the tax under this chapter.

Sec. 172.273. EXEMPTION: DEVELOPMENT CORPORATION. A nonprofit corporation organized under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) is exempted from the tax under this chapter.

Sec. 172.274. EXEMPTION: COOPERATIVE ASSOCIATION. A cooperative association incorporated under Subchapter B, Chapter 301, Health and Safety Code, or under the Cooperative Association Act (Article 1396-50.01, Vernon's Texas Civil Statutes) is exempted from the tax under this chapter.

Sec. 172.275. EXEMPTION: COOPERATIVE CREDIT ASSOCIATION. A cooperative credit association incorporated under Chapter 55, Agriculture Code, is exempted from the tax under this chapter.

Sec. 172.276. EXEMPTION: ELECTRIC COOPERATIVE CORPORATION. An electric cooperative corporation incorporated under the Electric Cooperative Corporation Act (Article 1528b, Vernon's Texas Civil Statutes) that is not a participant in a joint powers agency is exempted from the tax under this chapter.

Sec. 172.277. EXEMPTION: TELEPHONE COOPERATIVE CORPORATIONS. A telephone cooperative corporation incorporated under the Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes) is exempted from the tax under this chapter.

Sec. 172.278. EXEMPTION: CERTAIN HOMEOWNERS' ASSOCIATIONS. (a) A nonprofit corporation is exempted from the tax under this chapter if:

(1) the corporation is organized and operated primarily to obtain, manage, construct, and maintain the property in or of a residential condominium or residential real estate development; and

(2) the owners of individual lots, residences, or residential units control at least 51 percent of the votes of the corporation and that voting control, however acquired, is not held by:

(A) a single individual or family; or

(B) one or more developers, declarants, banks, investors, or other similar parties.

(b) For purposes of this section, a condominium project is considered residential if the project is legally restricted for use as residences. A real estate development is considered residential if the property is legally restricted for use as residences.

Sec. 172.279. EXEMPTION: EMERGENCY MEDICAL SERVICE CORPORATION. A nonprofit corporation that is organized for the sole purpose of and engages exclusively in providing emergency medical services, including rescue and ambulance services, is exempted from the tax under this chapter.

Sec. 172.280. EXEMPTION: CERTAIN TRADE SHOW PARTICIPANTS. (a) A business entity is exempted from the tax under this chapter if:

(1) the only business activity conducted by or on behalf of the business entity in this state is related to the solicitation of orders conducted by representatives of the business entity who:

(A) solicit orders of personal property to be sent outside this state for approval or rejection by the business entity and, if approved, to be filled by shipment or delivery from a point outside this state; or

(B) solicit orders in the name of or for the benefit of a customer or prospective customer of the business entity, if the orders are filled or intended to be filled by the customer or prospective customer of the business entity by making orders to the business entity described by Paragraph (A); and

(2) the solicitation of orders is conducted on an occasional basis at trade shows;

(A) promoted by wholesale centers;

(B) promoted by nonprofit trade or professional associations for the purpose of facilitating the solicitation of orders from members of the trade or profession; or

(C) held at municipally owned or county-owned convention centers or meeting facilities.

(b) For purposes of this section, the solicitation of orders is conducted on an occasional basis only if the solicitation is conducted during not more than five periods during the business period of the business entity to which a tax report applies and if no single period during which solicitation is conducted is longer than 120 hours.

(c) In this section, "wholesale center" means a permanent wholesale facility that has permanent tenants and that promotes at least four national or regional trade shows in a calendar year.

Sec. 172.281. EXEMPTION: RECYCLING OPERATION. A business entity engaged solely in the business of recycling sludge, as defined by Section 361.003, Health and Safety Code, is exempted from the tax under this chapter.

Sec. 172.282. EXEMPTION: NONPROFIT CORPORATION ORGANIZED FOR STUDENT LOAN FUNDS OR STUDENT SCHOLARSHIP PURPOSES. A nonprofit corporation organized solely to provide a student loan fund or student scholarships is exempted from the tax under this chapter.

Sec. 172.283. EXEMPTION: CREDIT UNION. There is exempted from the taxes imposed by this chapter a credit union incorporated under the Texas Credit Union Act (Article 2461-1.01 et seq., Vernon's Texas Civil Statutes).

[Sections 172.284-172.300 reserved for expansion]

SUBCHAPTER F. TAX REPORTS AND PAYMENTS

Sec. 172.301. ESTIMATED TAX REPORTS FOR CORPORATIONS. (a) This section applies only to a taxpayer who is a corporation.

(b) A taxpayer who reasonably expects liability for the tax year to exceed \$500 shall file an estimated report and pay an estimated tax for each quarter of the taxpayer's tax year.

(c) For a taxpayer whose tax year is the calendar year, the quarterly reports and estimated payments shall be made on or before April 15, June 15, September 15, and December 15. A taxpayer whose tax year is not the calendar year shall file quarterly reports and make estimated payments on or before the due dates that in the taxpayer's fiscal year correspond to the date required by the Internal Revenue Service, or if that date does not apply to a taxpayer, to the calendar year dates provided by this subsection.

(d) The estimated payment made with each quarterly report of each tax year is for the estimated tax base for the quarter or one-fourth of the estimated annual liability. The second, third, and fourth estimated payments in each tax

year shall include adjustments, if necessary, to correct underpayments or overpayments from previous quarterly payments in the tax year to a revised estimate of the annual tax liability.

(e) The comptroller may not assess interest for tax that is delinquent if:

(1) the sum of the estimated payments equals at least 90 percent of the liability or one percent of the gross receipts in this state, as described by Section 172.206, for the tax year and the amount of each estimated payment reasonably approximates the tax liability incurred during the quarter for which the estimated payment was made; or

(2) the preceding year's tax liability was submitted by the taxpayer in four equal installments the sum of which equals the previous year's tax liability.

(f) A taxpayer shall make each estimated report on a form prescribed by the comptroller and shall include an estimate of the annual tax liability and other information required by the comptroller. The form may be combined with any other tax reporting form prescribed by the comptroller.

(g) A taxpayer who files an estimated tax report for the taxpayer's first tax year of less than 12 months shall pay amounts with each report that are proportional to the number of payments made in the first tax year.

(h) Payments made under this section are a credit against the payment required with the annual tax report.

(i) The comptroller may require filing of the reports and payment of the tax for other than quarterly or annual periods if the comptroller considers it necessary to ensure payment of the tax or to provide a more efficient administration of the tax.

(j) A taxpayer who elects under the Internal Revenue Code to file an annual federal income tax return by March 1 in the year following the taxpayer's tax year and does not make a quarterly estimate or payment, or does not make a quarterly estimate or payment and files a tentative annual return with a tentative payment by January 15 in the year following the taxpayer's tax year and a final return by April 15 in the year following the taxpayer's tax year, has the same option in filing the estimated and annual reports required by this chapter.

Sec. 172.302. REPORT FOR FIRST TAX YEAR. A taxpayer may elect to compute the tax for the first taxable year, if less than 12 months by determining the amount of the tax as if this chapter were effective on the first day of the taxpayer's annual accounting period and multiply the amount by a fraction, the numerator of which is the number of months in the taxpayer's first taxable year, and the denominator of which is 12.

Sec. 172.303. ANNUAL TAX REPORT. (a) A taxpayer shall file an annual or final report with the comptroller, in the form and content prescribed by the comptroller, on or before the date the taxpayer's federal income tax return is due, or if that date does not apply to a taxpayer, the last day of the fourth month after the end of the taxpayer's tax year.

(b) A taxpayer shall pay any final tax liability with the final report.

(c) When a taxpayer is granted an extension of time to file the taxpayer's federal income tax return for a taxable year, the filing of a copy of the request for the federal extension with a preliminary report and payment of the estimated tax with the comptroller by the due date provided in Subsection (a)

automatically extends the due date for the filing of a final report under this chapter for a period equivalent to the federal extension plus 60 days. Interest at the rate that applies to delinquent taxes under Section 111.060 shall be added to the amount of the tax unpaid for the period of the extension.

Sec. 172.304. FILING OF FEDERAL TAX RETURNS. (a) A taxpayer required to file a report under this chapter may be required to furnish a copy of any return or portion of any return that the taxpayer has filed under the Internal Revenue Code.

(b) A taxpayer shall file an amended report with the comptroller showing any alteration in or modification of the taxpayer's federal income tax return that affects the taxpayer's tax base under this chapter not later than 120 days after the date of the final determination by the Internal Revenue Service.

(c) At the request of the comptroller, a person required by the Internal Revenue Code to file or submit an information return of income paid to others shall, to the extent the information is applicable to residents of this state, at the same time file or submit information required by the comptroller in the form prescribed by the comptroller.

Sec. 172.305. REPORTS OF TAXPAYERS OTHER THAN CORPORATIONS. (a) This section applies only to a taxpayer who is not a corporation.

(b) A taxpayer to which this section applies, including a business entity, such as a partnership, business association, or joint venture, that has more than one owner, shall file a tax report that represents the business activities of the entire entity for the relevant accounting period.

(c) A taxpayer to which this section applies is required only to file an annual report under Section 172.304.

(d) Each owner of a business entity or a business activity in which general liability is not otherwise limited by law is jointly and severally liable for the amount of the taxes imposed by this chapter on the business entity or business activity.

Sec. 172.306. COMBINED ENTITY REPORTS. (a) A controlled group of corporations or an entity under common control, as defined by the Internal Revenue Code, or an affiliated group shall file a combined report.

(b) A corporation that has less than 80 percent of its tangible assets located in a state or states may not be included in any combined report but must file as a separate entity.

Sec. 172.307. INFORMATION REPORTS. The comptroller by rule may require, at the time and in the manner specified by rule, the filing of an information report of any taxpayer who has business activity in or allocated to this state and who for a tax period has gross receipts, as described by Section 172.207, of \$500,000 or more.

[Sections 172.308-172.350 reserved for expansion]

SUBCHAPTER G. ADMINISTRATION, COLLECTION, AND ENFORCEMENT

Sec. 172.351. PROHIBITION OF DISCLOSURE OF INFORMATION. (a) A person, including a state officer or employee, who has access to a report filed under this chapter commits an offense if the person makes known in a manner not permitted by law the amount or source of the taxpayer's income,

profits, losses, expenditures, or other information in the report relating to the financial condition of the taxpayer.

(b) An offense under this section is punishable by a fine of not more than \$1,000, confinement in jail for not more than one year, or both.

Sec. 172.352. PENALTY FOR FAILURE TO PAY TAX OR FILE REPORT. (a) If a taxpayer on which a tax is imposed by this chapter fails to pay the tax when it is due and payable or fails to file a report required by this chapter when it is due, the taxpayer is liable for a penalty of five percent of the amount of the tax due.

(b) If the tax is not paid or the report is not filed before the 31st day after the due date, a penalty of an additional five percent of the tax due is imposed.

(c) The minimum penalty under this section is \$1.

Sec. 172.353. WILFUL AND FRAUDULENT ACTS. (a) A taxpayer commits an offense if the taxpayer is subject to the provisions of this chapter and the taxpayer wilfully:

(1) fails to file a report;

(2) fails to keep books and records as required by this chapter;

(3) files a fraudulent report;

(4) violates any rule of the comptroller for the administration and enforcement of the provisions of this chapter; or

(5) attempts in any other manner to evade or defeat any tax imposed by this chapter or the payment of the tax.

(b) A person commits an offense if the person is an accountant or an agent for or an officer or employee of a taxpayer and the person knowingly enters or provides false information on any report, return, or other document filed by the taxpayer under this chapter.

(c) A person who commits an offense under this section may also, in addition to the punishment provided by this section, be liable for a penalty under this chapter.

(d) An offense under this section is a Class A misdemeanor.

(e) A person whose commercial domicile or whose residence is in this state may be prosecuted under this section only in the county in which the person's commercial domicile or residence is located unless the person asserts a right to be prosecuted in another county.

(f) A prosecution for a violation of this section must be commenced before the fifth anniversary of the date of the violation.

Sec. 172.354. RECIPROCAL AGREEMENTS. The comptroller may enter into reciprocal agreements with the United States Department of the Treasury or taxing officials of other states or nations for the enforcement, collection, and exchange of data in connection with the administration of this chapter.

[Sections 172.355-172.400 reserved for expansion]

SUBCHAPTER H. FORFEITURE OF CORPORATE PRIVILEGES

Sec. 172.401. FORFEITURE OF CORPORATE PRIVILEGES. The comptroller shall forfeit the corporate privileges of a corporation on which the tax imposed by this chapter is imposed if the corporation:

(1) does not file, in accordance with this chapter and before the 45th day after the date notice of forfeiture is mailed, a report required by this chapter; or

(2) does not pay, before the 45th day after the date notice of forfeiture is mailed, a tax imposed by this chapter or does not pay, before that date, a penalty imposed by this chapter relating to that tax.

Sec. 172.402. EFFECTS OF FORFEITURE. If the corporate privileges of a corporation are forfeited under this subchapter:

(1) the corporation is denied the right to sue or defend in a court of this state; and

(2) each director or officer of the corporation is liable for a debt of the corporation as provided by Section 172.405.

Sec. 172.403. SUIT ON CAUSE OF ACTION ARISING BEFORE FORFEITURE. In a suit against a corporation on a cause of action arising before the forfeiture of the corporate privileges of the corporation, affirmative relief may not be granted to the corporation unless its corporate privileges are revived under this chapter.

Sec. 172.404. EXCEPTION TO FORFEITURE. The forfeiture of the corporate privileges of a corporation does not apply to the privilege to defend in a suit to forfeit the corporation's charter or certificate of authority.

Sec. 172.405. LIABILITY OF DIRECTOR AND OFFICERS. (a) If the corporate privileges of a corporation are forfeited for the failure to file a report or pay a tax or penalty, each director or officer of the corporation is liable for each debt of the corporation that is created or incurred in this state after the date on which the report, tax, or penalty is due and before the corporate privileges are revived. The liability includes liability for any tax or penalty imposed by this chapter on the corporation that becomes due and payable after the date of the forfeiture.

(b) The liability of a director or officer is in the same manner and to the same extent as if the director or officer were a partner and the corporation were a partnership.

(c) A director or officer is not liable for a debt of the corporation if the director or officer shows that the debt was created or incurred:

(1) over the director's objection; or

(2) without the director's knowledge and that the exercise of reasonable diligence to become acquainted with the affairs of the corporation would not have revealed the intention to create the debt.

(d) If a corporation's charter or certificate of authority and its corporate privileges are forfeited and revived under this chapter, the liability under this section of a director or officer of the corporation is not affected by the revival of the charter or certificate and the corporate privileges.

Sec. 172.406. NOTICE OF FORFEITURE. (a) To forfeit the corporate privileges of a corporation, the comptroller must notify the corporation that the forfeiture will occur without a judicial proceeding unless the corporation:

(1) files, within the time established by Section 172.401, the report to which that section refers; or

(2) pays, within the time established by Section 172.401, the delinquent tax and penalty to which that section refers.

(b) The notice must be written or printed and be verified by the seal of the comptroller's office.

(c) The comptroller shall mail the notice to the corporation at least 45 days

before the forfeiture of corporate privileges. The comptroller shall address the notice to the corporation and mail it to the address named in the corporation's charter as its principal place of business or to another known place of business of the corporation.

(d) The comptroller shall keep at the comptroller's office a record of the date on which the notice is mailed. For the purposes of this chapter, the notice and the record of the mailing date constitute legal and sufficient notice of the forfeiture.

Sec. 172.407. JUDICIAL PROCEEDING NOT REQUIRED FOR FORFEITURE. The forfeiture of the corporate privileges of a corporation is effected by the comptroller without a judicial proceeding.

Sec. 172.408. REVIVAL OF CORPORATE PRIVILEGES. The comptroller shall revive the corporate privileges of a corporation if the corporation, before the forfeiture of its charter or certificate of authority, pays any tax, penalty, or interest due under this chapter.

[Sections 172.409-172.450 reserved for expansion]

SUBCHAPTER I. FORFEITURE OF CHARTER OR CERTIFICATE OF AUTHORITY

Sec. 172.451. GROUNDS FOR FORFEITURE OF CHARTER OR CERTIFICATE OF AUTHORITY. It is a ground for the forfeiture of a corporation's charter or certificate of authority if the corporate privileges of the corporation are forfeited under this chapter and the corporation does not pay, before the 120th day after the date the corporate privileges are forfeited, the amount necessary for the corporation to revive under this chapter its corporate privileges.

Sec. 172.452. CERTIFICATION BY COMPTROLLER. After the 120th day after the date that the corporate privileges of a corporation are forfeited under this chapter, the comptroller shall certify the name of the corporation to the attorney general and the secretary of state.

Sec. 172.453. SUIT FOR JUDICIAL FORFEITURE. On receipt of the comptroller's certification, the attorney general shall bring suit to forfeit the charter or certificate of authority of the corporation if a ground exists for the forfeiture of the charter or certificate.

Sec. 172.454. RECORD OF JUDICIAL FORFEITURE. (a) If a district court forfeits a corporation's charter or certificate of authority under this chapter, the clerk of the court shall promptly mail to the secretary of state a certified copy of the court's judgment. On receipt of the copy of the judgment, the secretary of state shall inscribe on the corporation's record at the secretary's office the words "Judgment of Forfeiture" and the date of the judgment.

(b) If an appeal of the judgment is perfected, the clerk of the court shall promptly certify to the secretary of state that the appeal has been perfected. On receipt of the certification, the secretary of state shall inscribe on the corporation's record at the secretary's office the word "Appealed" and the date on which the appeal was perfected.

(c) If final disposition of an appeal is made, the clerk of the court making the disposition shall promptly certify to the secretary of state the type of disposition made and the date of the disposition. On receipt of the certification, the secretary of state shall inscribe on the corporation's record at the secretary's

office a brief note of the type of final disposition made and the date of the disposition.

Sec. 172.455. REVIVAL OF CHARTER OR CERTIFICATE OF AUTHORITY AFTER JUDICIAL FORFEITURE. A corporation whose charter or certificate of authority is judicially forfeited under this chapter is entitled to have its charter or certificate revived and to have its corporate privileges revived if:

(1) the corporation files each report that is required by this chapter and that is delinquent;

(2) the corporation pays the tax, penalty, and interest that is imposed by this chapter and that is due at the time the suit under Section 172.456 to set aside forfeiture is filed; and

(3) the forfeiture of the corporation's charter or certificate is set aside in a suit under Section 172.456.

Sec. 172.456. SUIT TO SET ASIDE JUDICIAL FORFEITURE. If a corporation's charter or certificate of authority is judicially forfeited under this chapter, a stockholder, director, or officer of the corporation at the time of the forfeiture of the charter or certificate or of the corporate privileges of the corporation may bring suit in a district court of Travis County in the name of the corporation to set aside the forfeiture of the charter or certificate. The suit must be in the nature of a bill of review. The secretary of state and attorney general must be made defendants in the suit.

Sec. 172.457. RECORD OF SUIT TO SET ASIDE JUDICIAL FORFEITURE. If a court under this chapter sets aside the forfeiture of a corporation's charter or certificate of authority, the secretary of state shall inscribe on the corporation's record in the secretary's office the words "Charter Revived by Court Order" or "Certificate Revived by Court Order," a citation to the suit, and the date of the court's judgment.

Sec. 172.458. CORPORATE PRIVILEGES AFTER JUDICIAL FORFEITURE IS SET ASIDE. If a court under this chapter sets aside the forfeiture of a corporation's charter or certificate of authority, the comptroller shall revive the corporate privileges of the corporation and shall inscribe on the corporation's record in the comptroller's office a note of the revival.

Sec. 172.459. FORFEITURE BY SECRETARY OF STATE. The secretary of state may forfeit the charter or certificate of authority of a corporation if:

(1) the secretary receives the comptroller's certification under Section 172.452;

(2) the corporation does not revive its forfeited corporate privileges before the 120th day after the date that the corporate privileges were forfeited; and

(3) the corporation does not have assets from which a judgment for any tax, penalty, or court costs imposed by this chapter may be satisfied.

Sec. 172.460. JUDICIAL PROCEEDING NOT REQUIRED FOR FORFEITURE BY SECRETARY OF STATE. The forfeiture by the secretary of state of a corporation's charter or certificate of authority under this chapter is effected without a judicial proceeding.

Sec. 172.461. RECORD OF FORFEITURE BY SECRETARY OF STATE.

The secretary of state shall effect a forfeiture of a corporation's charter or certificate of authority under this chapter by inscribing on the corporation's record in the secretary's office the words "Charter Forfeited" or "Certificate Forfeited," the date on which this inscription is made, and a citation to this chapter as authority for the forfeiture.

Sec. 172.462. REVIVAL OF CHARTER OR CERTIFICATE OF AUTHORITY AFTER FORFEITURE BY SECRETARY OF STATE. A corporation whose charter or certificate of authority is forfeited under this chapter by the secretary of state is entitled to have its charter or certificate revived and to have its corporate privileges revived if:

(1) the corporation files each report that is required by this chapter and that is delinquent;

(2) the corporation pays the tax, penalty, and interest that is imposed by this chapter and that is due at the time the request under Section 172.463 to set aside forfeiture is made; and

(3) the forfeiture of the corporation's charter or certificate is set aside in a proceeding under Section 172.463.

Sec. 172.463. PROCEEDING TO SET ASIDE FORFEITURE BY SECRETARY OF STATE. (a) If a corporation's charter or certificate of authority is forfeited under this chapter by the secretary of state, a stockholder, director, or officer of the corporation at the time of the forfeiture of the charter or certificate or of the corporate privileges of the corporation may request in the name of the corporation that the secretary of state set aside the forfeiture of the charter or certificate.

(b) If a request is made, the secretary of state shall determine if each delinquent report has been filed and any delinquent tax, penalty, or interest has been paid. If each report has been filed and the tax, penalty, or interest has been paid, the secretary shall set aside the forfeiture of the corporation's charter or certificate of authority.

Sec. 172.464. CORPORATE PRIVILEGES AFTER FORFEITURE BY SECRETARY OF STATE IS SET ASIDE. If the secretary of state sets aside under this chapter the forfeiture of a corporation's charter or certificate of authority, the comptroller shall revive the corporate privileges of the corporation.

Sec. 172.465. USE OF CORPORATE NAME AFTER REVIVAL OF CHARTER OR CERTIFICATE OF AUTHORITY. If a corporation's charter or certificate of authority is forfeited under this chapter by the secretary of state and if the corporation requests the secretary to set aside the forfeiture under Section 172.463, the corporation shall determine from the secretary whether the corporation's name is available for use. If the name is not available, the corporation shall amend its charter or certificate to change its name.

[Sections 172.466-172.500 reserved for expansion]

SUBCHAPTER J. DISPOSITION OF REVENUE

Sec. 172.501. TEXAS SCHOOL TRUST FUND. The revenue from the tax imposed by this chapter shall be deposited to the credit of the Texas School Trust Fund.

SECTION 3.02. Section 101.003(8), Tax Code, as amended by Section 1.01, Chapter 486, and Section 3.27, Chapter 685, Acts of the 73rd Legislature,

Regular Session, 1993, is amended to read as follows:

(8) "Taxpayer" means a person liable for a tax, fee, assessment, or other amount imposed by a statute or under the authority of a statutory function administered by the comptroller. The term includes a business entity subject to the tax under Chapter 172, Tax Code.

SECTION 3.03. (a) Chapter 171, Tax Code, is repealed January 1, 1998.

(b) Chapter 171, Tax Code, and Subtitle B, Title 2, Tax Code, continue to apply to audits, deficiencies, redeterminations, and refunds of any tax due or collected under Chapter 171 until barred by limitations.

(c) Any corporation that is subject to the franchise tax imposed by Chapter 171, Tax Code, before the date of its repeal shall pay an additional tax equal to 4.5 percent of the corporation's net taxable earned surplus computed on the period beginning on the day after the last day for which the tax imposed on net taxable earned surplus was computed under Section 171.1532, Tax Code, and ending on December 31, 1997. The comptroller by rule shall provide for the payment of tax due for an initial or second period that does not expire before January 1, 1998. A franchise tax return is not required for any initial or second period as described by Chapter 171, Tax Code, that begins on or after January 1, 1998.

(d) The repeal of Chapter 171, Tax Code, does not affect:

(1) the status of a corporation that has had its corporate privileges, certificate of authority, or corporate charter revoked, suit filed against it, or a receiver appointed under Subchapter F, G, or H of that chapter;

(2) the ability of the comptroller, secretary of state, or attorney general to take action against a corporation under Subchapter F, G, or H for actions that took place before the repeal; or

(3) the right of a corporation to contest a forfeiture, revocation, lawsuit, or appointment of a receiver under Subchapter F, G, or H.

SECTION 3.04. (a) Chapter 172, Tax Code, as added by this article, applies to any business activity taking place on or after July 1, 1998.

(b) Tax owed under Chapter 172, Tax Code, as added by this article, for 1998, shall be proportionately reduced, in the manner provided by Section 172.302, as added by this article, for the report for the first tax year of a taxpayer, to reflect that the 1998 tax year is not a full calendar year.

(c) A corporation, as that term is defined by Section 172.006, Tax Code, as added by this article, shall make its first estimated quarterly business tax payment under Chapter 172, as added by this article, on or before October 31, 1998.

(d) A taxpayer, as that term is defined by Chapter 172, as added by this article, other than a corporation, as that term is defined by Section 172.006, Tax Code, as added by this article, shall file its first tax year report and make its business tax payment under Chapter 172, as added by this article, for business activity taking place in 1998, beginning on July 1, 1998, on or before April 15, 1999.

(e) In 1998, the comptroller may by rule extend the deadline for estimated tax payments of the tax under Chapter 172, Tax Code, as added by this article.

SECTION 3.05. Subject to Sections 3.03 and 3.04 of this article, this article takes effect when this Act takes effect.

ARTICLE 4. SALES, EXCISE, AND USE TAX

SECTION 4.01. Section 151.051(b), Tax Code, is amended to read as follows:

(b) The sales tax rate is 6 3/4 [~~6-1/4~~] percent of the sales price of the taxable item sold.

SECTION 4.02. Subchapter M, Chapter 151, Tax Code, is amended by adding Section 151.802 to read as follows:

Sec. 151.802. DEDICATION TO TEXAS SCHOOL TRUST FUND. (a) The net revenue derived from the imposition of the taxes imposed by this chapter at the rate of one-half of one percent of the sales price of taxable items under this chapter shall be credited to the Texas School Trust Fund.

(b) The comptroller shall determine the amount described by Subsection (a) according to available statistical data indicating the estimated or actual total receipts in this state from taxable sales.

SECTION 4.03. (a) This article takes effect January 1, 1998.

(b) The change in law made by this article does not affect taxes imposed before the effective date of this article, and the law in effect before the effective date of this article is continued in effect for purposes of the liability for and collection of those taxes.

ARTICLE 5. MOTOR VEHICLE SALES, RENTAL, AND USE TAX

SECTION 5.01. Section 152.021, Tax Code, is amended to read as follows:

Sec. 152.021. RETAIL SALES TAX. (a) A tax is imposed on every retail sale of every motor vehicle sold in this state. Except as provided by this chapter, the tax is an obligation of and shall be paid by the purchaser of the motor vehicle.

(b) The tax rate is 6 3/4 [~~6-1/4~~] percent of the total consideration.

SECTION 5.02. Section 152.022, Tax Code, is amended to read as follows:

Sec. 152.022. TAX ON MOTOR VEHICLE PURCHASED OUTSIDE THIS STATE. (a) A use tax is imposed on a motor vehicle purchased at retail sale outside this state and used on the public highways of this state by a Texas resident or other person who is domiciled or doing business in this state.

(b) The tax rate is 6 3/4 [~~6-1/4~~] percent of the total consideration.

SECTION 5.03. Sections 152.026(a) and (b), Tax Code, are amended to read as follows:

(a) A tax is imposed on the gross rental receipts from the rental of a rented motor vehicle.

(b) The tax rate is 10 percent of the gross rental receipts from the rental of a rented motor vehicle for 30 days or less and 6 3/4 [~~6-1/4~~] percent of the gross rental receipts from the rental of a rented motor vehicle for longer than 30 days.

SECTION 5.04. Section 152.028, Tax Code, is amended to read as follows:

Sec. 152.028. USE TAX ON MOTOR VEHICLE BROUGHT BACK INTO STATE. (a) A use tax is imposed on the operator of a motor vehicle that was purchased tax-free under Section 152.090 of this code and that is brought back into this state for use on the public highways of this state. The

tax is imposed at the time the motor vehicle is brought back into this state.

(b) The tax rate is 6 3/4 [~~6-1/4~~] percent of the total consideration.

SECTION 5.05. Section 152.122, Tax Code, is amended to read as follows:

Sec. 152.122. ALLOCATION OF TAX. The comptroller shall deposit the funds received under Section 152.121 of this code as follows:

(1) 25 percent [~~1/4~~] to the credit of the foundation school fund; [~~and~~]

(2) 7.4 percent to the Texas School Trust Fund; and

(3) the remaining funds to the credit of the general revenue fund.

SECTION 5.06. This article takes effect January 1, 1998.

ARTICLE 6. STATE LOTTERY ACCOUNT

SECTION 6.01. Section 466.355(b), Government Code, is amended to read as follows:

(b) Money in the state lottery account may be used only for the following purposes and shall be distributed as follows:

(1) the payment of prizes to the holders of winning tickets;

(2) the payment of costs incurred in the operation and administration of the lottery, including any fees received by a lottery operator, provided that the costs incurred in a fiscal biennium may not exceed an amount equal to 15 percent of the gross revenue accruing from the sale of tickets in that biennium;

(3) the establishment of a pooled bond fund, lottery prize reserve fund, unclaimed prize fund, and prize payment account; and

(4) the balance, after creation of a reserve sufficient to pay the amounts needed or estimated to be needed under Subdivisions (1) through (3), to be transferred to the Texas School Trust Fund [~~unobligated portion of the general revenue fund~~], on or before the 15th day of each month.

SECTION 6.02. This article takes effect September 1, 1997.

SECTION 6.03. Section 466.355, Government Code, as amended by this article, applies only to revenue from the sale of a lottery ticket that occurs on or after the effective date of this article. Revenue from the sale of a lottery ticket that occurs before the effective date of this article is governed by the law in effect on the date of the sale, and the former law is continued in effect for that purpose.

ARTICLE 7. CONTINGENCY; EMERGENCY

SECTION 7.01. (a) This Act takes effect on the date on which the constitutional amendment proposed by ___ J.R. No. ___, 75th Legislature, Regular Session, 1997, takes effect. If that amendment is not approved by the voters, this Act has no effect.

(b) Each article of this Act takes effect as provided by the terms of the article.

SECTION 7.02. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment No. 142

Representative Sadler offered the following amendment to Amendment No. 141:

Amend the Gallego amendment to **CSHB 4** (on page 480 of the amendment packet) to read as follows:

(1) On page 9, line 4, strike "\$53.15" and substitute "\$49.60".

(2) On page 12, line 23, strike "70 cents" and substitute "75 cents".

(3) On page 37, strike lines 11-16 and substitute the following:

(e-1) Notwithstanding Subsection (e), the amount to which a district is entitled under this section for the 1997-1998 and 1998-1999 school years may not exceed the amount to which the district would be entitled at the lesser of the rate of 75 cents or the maximum rate permitted under Section 26.08(g)(2)(A), Tax Code, for the district for the 1997 tax year. This subsection expires September 1, 1999.

(e-2) Notwithstanding Subsection (e), the amount to which a district is entitled under this section for the 1999-2000 and 2000-2001 school years may not exceed the amount to which the district would be entitled at the lesser of the rate of 75 cents or the maximum rate permitted under Section 26.08(g-1)(2)(A), Tax Code, for the district for the 1999 tax year. This subsection expires September 1, 2002.

(4) On page 39, line 19, strike "70 cents" and substitute "75 cents".

(5) On page 95, line 16, strike "70 cents" and substitute "75 cents".

(6) On page 95, line 19, strike "70 cents" and substitute "75 cents".

(7) On page 95, line 20, strike "80 cents" and substitute "85 cents".

(8) In SECTION 1.36 of the bill, in added Section 45.0031(b-1), Education Code, as added by the Bosse amendment as amended (amendment numbers 13 and 15), strike "70 cents" both places it appears and substitute "75 cents".

(9) In SECTION 1.36 of the bill, in added Section 45.0031(b-1), Education Code, as added by the Bosse amendment as amended (amendments numbers 13 and 15), strike "80 cents" and substitute "85 cents".

(10) On page 95, between lines 23 and 24, insert the following:

(b-2) For the 1997 and 1998 tax years, a school district may levy a tax at a rate that exceeds 75 cents but not to exceed 83 cents to the extent necessary to set a rate equal to the rate allowed under Section 26.08(g)(2)(A), Tax Code, without holding the election required under Subsection (b). This subsection does not authorize a rate in excess of 75 cents for any other purpose. This subsection expires September 1, 1999.

(11) On page 124, line 18, strike "effective" and substitute "[effective]".

(12) On page 124, line 18, between "rate" and "and," insert "for the preceding year".

(13) On page 124, line 24, strike "effective".

(14) On page 124, line 25, between "rate" and "and," insert "for the preceding year".

(15) On page 127, line 18, strike "1997 tax year" and substitute "1997 and 1998 tax years".

(16) On page 127, line 19, between "1997" and "tax year", insert "or 1998".

(17) On page 127, line 21, strike "70 cents" and substitute "83 cents".

(18) On page 128, line 8, strike "2.5 cents" and substitute "4 cents".

(19) On page 128, between lines 8 and 9, insert the following:

(g-1) Subsection (a) does not apply to the 1999 tax year. For that tax year,

a school district may not adopt a tax rate for maintenance and operations purposes that exceeds the lesser of:

(1) 75 cents on the \$100 valuation of property, except as authorized by an election held under Section 45.0031, Education Code; or

(2) a rate equal to the sum of:

(A) the lesser of:

(i) the maintenance and operations rate levied by the district for the 1998 tax year; or

(ii) the rate necessary for the district to receive an amount of state and local funds per student, using the student multipliers under Section 42.101(b), Education Code, that is equal to the state and local funding per weighted student for maintenance and operations to which the district would have been entitled for that year at a rate that is five cents greater than the rate authorized under Subsection (g)(2)(A) for the 1997 tax year; plus

(B) 2.5 cents.

(20) On page 128, line 22, strike "1999" and substitute "2001".

(21) On page 177, line 8, between "to" and "each", insert "and ordinary income from trade or business activities allocated to".

Amendment No. 142 was adopted without objection.

Amendment No. 141, as amended, was adopted without objection.

A record vote was requested.

CSHB 4, as amended, was passed to engrossment by (Record 242): 95 Yeas, 49 Nays, 2 Present, not voting.

Yeas — Mr. Speaker(C); Alexander; Alvarado; Averitt; Berlanga; Bosse; Brimer; Carter; Chavez; Clark; Coleman; Cook; Counts; Craddick; Cuellar; Danburg; Delisi; Denny; Dunnam; Edwards; Eiland; Farrar; Flores; Gallego; Galloway; Garcia; Glaze; Goodman; Goolsby; Gray; Greenberg; Gutierrez; Haggerty; Hawley; Hernandez; Hightower; Hilbert; Hilderbran; Hinojosa; Hirschi; Hochberg; Holzheuser; Hunter; Junell; Kamel; Keel; King; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Marchant; Maxey; McClendon; McReynolds; Moffat; Moreno; Mowery; Naishtat; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Price; Puente; Ramsay; Rangel; Reyna, A.; Rhodes; Roman; Sadler; Serna; Smith; Solis; Solomons; Staples; Stiles; Telford; Thompson; Turner, B.; Van de Putte; West; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Nays — Allen; Bailey; Bonnen; Burnam; Christian; Corte; Crabb; Culbertson; Davila; Davis; Driver; Ehrhardt; Elkins; Finnell; Grusendorf; Hamric; Hartnett; Heflin; Hill; Hodge; Horn; Howard; Hupp; Isett; Jackson; Janek; Jones, D.; Jones, J.; Keffer; Kubiak; Luna; Madden; McCall; Merritt; Nixon; Raymond; Reyna, E.; Seaman; Shields; Siebert; Smithee; Swinford; Talton; Tillery; Torres; Turner, S.; Uher; Walker; Williams.

Present, not voting — Chisum; Giddings.

Absent, Excused — Dukes; Dutton; Rabuck.

PAIRED

Chisum (present), who would vote yes, with Rabuck (absent), who would vote no.

HB 4 ON THIRD READING

(by Craddick, Junell, et al.)

CONSTITUTIONAL RULE SUSPENDED

Representative Sadler moved to suspend the constitutional rule requiring bills to be read on three several days and to place **HB 4** on its third reading and final passage.

The motion prevailed by (Record 243): 128 Yeas, 14 Nays, 2 Present, not voting.

Yeas — Alexander; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Cuellar; Davila; Delisi; Denny; Dunnam; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Flores; Gallego; Galloway; Garcia; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Junell; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McClendon; McReynolds; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Price; Puente; Ramsay; Rangel; Reyna, A.; Reyna, E.; Rhodes; Roman; Sadler; Seaman; Serna; Smith; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Nays — Allen; Burnam; Culberson; Danburg; Davis; Driver; Hodge; Jones, J.; McCall; Merritt; Raymond; Shields; Siebert; Williams.

Present, not voting — Mr. Speaker(C); Giddings.

Absent, Excused — Dukes; Dutton; Rabuck.

Absent — Hinojosa; Jackson.

The speaker laid **HB 4** before the house on its third reading and final passage.

A record vote was requested.

HB 4 was read third time and was passed by (Record 244): 94 Yeas, 49 Nays, 2 Present, not voting.

Yeas — Mr. Speaker(C); Alexander; Alvarado; Averitt; Berlanga; Bosse; Brimer; Carter; Chavez; Clark; Coleman; Cook; Counts; Craddick; Cuellar; Danburg; Delisi; Denny; Dunnam; Edwards; Eiland; Farrar; Flores; Gallego; Galloway; Garcia; Glaze; Goodman; Goolsby; Gray; Greenberg; Gutierrez; Haggerty; Hawley; Hernandez; Hightower; Hilbert; Hilderbran; Hirschi; Hochberg; Holzheuser; Hunter; Junell; Kamel; Keel; King; Krusee; Kuempel;

Lewis, G.; Lewis, R.; Longoria; Marchant; Maxey; McClendon; McReynolds; Moffat; Moreno; Mowery; Naishtat; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Price; Puente; Ramsay; Rangel; Reyna, A.; Rhodes; Roman; Sadler; Serna; Smith; Solis; Solomons; Staples; Stiles; Telford; Thompson; Turner, B.; Van de Putte; West; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Nays — Allen; Bailey; Bonnen; Burnam; Christian; Corte; Crabb; Culberson; Davila; Davis; Driver; Ehrhardt; Elkins; Finnell; Grusendorf; Hamric; Hartnett; Heflin; Hill; Hodge; Horn; Howard; Hupp; Isett; Jackson; Janek; Jones, D.; Jones, J.; Keffer; Kubiak; Luna; Madden; McCall; Merritt; Nixon; Raymond; Reyna, E.; Seaman; Shields; Siebert; Smithee; Swinford; Talton; Tillery; Torres; Turner, S.; Uher; Walker; Williams.

Present, not voting — Chisum; Giddings.

Absent, Excused — Dukes; Dutton; Rabuck.

Absent — Hinojosa.

PAIRED

Chisum (present), who would vote yes, with Rabuck (absent), who would vote no.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Conference Committee on **HB 1**, 9 a.m. today, senate finance committee room.

ADJOURNMENT

Representative Hightower moved that the house adjourn until 10 a.m. Monday, April 28.

The motion prevailed without objection.

The house accordingly, at 2:56 a.m. Saturday, April 26, adjourned until 10 a.m. Monday, April 28.

APPENDIX

STANDING COMMITTEE REPORTS

Favorable reports have been filed by committees as follows:

April 24

Business & Industry - **HB 1978, HB 2966, HB 3021**

Civil Practices - **HB 21, HB 1756, HB 2425, HB 2480, HB 3581**

County Affairs - **HB 964, SB 655**

Criminal Jurisprudence - **HB 1620**

Economic Development - **HB 1625, SB 266, SB 503**

Environmental Regulation - **HB 1582, HB 1936, HB 2705, HB 3115, HB 3164, HB 3221, HB 3233**

Financial Institutions - **HB 2352**

Insurance - **HB 853, HB 989**

Juvenile Justice & Family Issues - **HB 2228, SB 29**

Public Health - **HB 3234**

Public Safety - **HB 3023**

State, Federal & International Relations - **HB 1812**

Transportation - **HB 3570**

ENGROSSED

April 24 - **HJR 4**

SENT TO THE GOVERNOR

April 24 - **HCR 210**

Page 1600

BLANK